

Next Date:
12/01/2023

**BEFORE HON'BLE
NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

**ORIGINAL APPLICATION NO.38/2020
IA No. 48/2020**

BETWEEN

Tanaji B. Gambhire Applicant

Versus

Union of India & Ors. Respondent

**AFFIDAVIT BY RESPONDENT NO. 12
PARANJAPE SCHEMES (CONSTRUCTION) LTD.**

**AFFIDAVIT TO OPPOSE THE ADMISSION OF
APPLICATION ON PRELIMINARY OBJECTIONS
ON LIMITATION & MAINTAINABILITY**

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Date: 07/01/2023

Place: Mumbai

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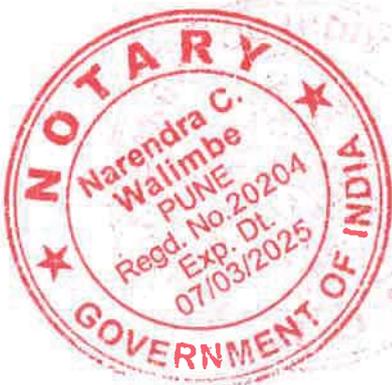
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ABBREVIATIONS USED

Short	Full-form
BUA	Built Up Area
CPCB	Central Pollution Control Board
CRAP	Community & Resource Augmentation Plan
CTE	'Consent to Establish'
CTO	'Consent to Operate'
DC	Development Control
DCR	Development Control Rules for Pune Municipal Corporation, Pune 1982
EAC	Expert Appraisal Committee
EC	Environmental Clearance
EDA	Environment Damage Assessment
EIA	Environment Impact Assessment
FAE	Field Area Expert
FSI	Floor Space Index
IA	Interlocutory Application
JCR	Joint Committee Report
MA	Miscellaneous Application
MoEFCC	Ministry of Environment, Forest, and Climate Change, Government of India
MPCB	Maharashtra Pollution Control Board
MRTP	Monopolies and Restrictive Trade Practices
NABET	National Accreditation Board for Education and Training
NGT	National Green Tribunal
OA	Original Application No. 38/2020 (WZ)

Short	Full-form
OM	Office Memorandum
PMC	Pune Municipal Corporation
PP	Project Proponent
PSCL	Answering Respondent No. 12 M/s Paranjape Schemes Construction) Ltd R-12 referred to as Respondent
RTI	Right to Information
SEAC	State Expert Appraisal Committee.
SEIAA	State Environment Impact Assessment Authority
sq.m m ²	Square Meter; area measurement unit

DIARY OF EVENTS

Sr.	Date (yy/mm/dd)	Activity / Particulars
1.	2005/12/15	Purchase of Land (Development Agreement)
2.	2006/07/12	Building Plan Sanction granted by PMC [This was prior to EIA Notification 14/09/2006].
3.	2006/11/30	Application for Environment Clearance submitted as per EIA Notification dated 14/09/2006
4.	2007/06/25	Environment Clearance granted by MOEF
5.	2008/07/25	Application for 'Consent to Establish' from MPCB, (`deemed unconditional consent' on 25/11/2008 as per the provisions of S.25(7) of the Water Act 1974)
6.	2009/09/09	1st Part Completion Certificate granted by PMC for 4 wings (A, B, C, D) of the residential project, each with a configuration of Lower Parking + Upper parking + 11 floors and 233 out of 238 flats
7.	2009/11/05	The 2 nd part Completion Certificate granted by PMC for 5 remaining flats

Sr.	Date (yy/mm/dd)	Activity / Particulars
8.	2009/12/02	Consent to Establish granted by MPCB
9.	2009/12/11	Handing over the possession to the bonafide buyers via Deed of Declaration
10.	2009/12/17	Final Completion Certificate granted by PMC for clubhouse & swimming pool
11.	2010/01/02	Application for 'Consent to Operate' (Residential Project)
12.	2010/08/02	'Consent to Operate' (Residential Project)
13.	2019/09/20	'Environmental Clearance Expansion' (Commercial Project)
14.	2019/12/17	'Consent To Establish' (Expansion) (Commercial Project)
15.	2022/05/03	Application for 'Consent to Operate'

SYNOPSIS

1. This affidavit is only based on the limited purpose to oppose the OA on the issue of limitation and maintainability.

- a. Hopelessly barred by limitation as the EC, Consent and construction of basement parking of 12,110 m² was done on 07/12/2009**
- b. There is no 'substantial question related to the environment' as defined in s. 2(m), as far as parking area construction is concerned
- c. Plural causes to be raised in a single application, is prohibited u/s.14 of the NGT Rules
- d. Reliefs are not consequential to the cause of action
- e. The Joint Committee was formed for finding facts only. Committee went beyond its jurisdiction. Committee could not have gone beyond what was within the powers of Hon'ble Tribunal. Committee was not qualified as an 'Expert' as required by NABET Scheme OR MoEFCC Notification 14/03/2017 or OM 07/07/2021. Powers of SEAC and SEIAA-Maharashtra can't be diluted OR substituted OR delegated to any other Committee.

2. The impugned project started in 2006 and was completed in all respect on 07/12/2009. The construction of two parking floors of 12,110

m² was part of the sanctioned plans of **12/07/2006 [Ax. A ■: PMC Sanctioned Plan]**. and **30/03/2009 [Ax. C ■ : PMC Sanctioned Plan]**.

3. The application for Environment Clearance was submitted to MoEFCC along with application Form-1, 1A, and Conceptual Plan on **30/11/2006 [Ax. B ■ : Acknowledgment of EC application]** EC was granted as per the application forms submitted. However, as per the prevailing practice at that point in time, non-FSI 'total covered built-up construction area' was not mentioned in the EC letters. The clarification came subsequently on **04/04/2011**, and then the EC letters mentioned the non-FSI area.

4. **When PP went for the next EC for Expansion in 2018**, this un-quoted, but already existing pre-sanctioned, pre-constructed parking area of **12,110 m²**, was also mentioned on the revised sanction plan dated 17.05.2019 which was appraised by SEAC-III and SEIAA-Maharashtra while granting the EC.

5. The limitation period is the substantive right of the PP and the protection given by law. Hon'ble National Green Tribunal can't go before and beyond the period of limitation under respective sections.

6. Unilateral appointment of the Committee, without hearing the Respondents, is also in violation of principles of natural justice AND violation of the Rules framed.

7. The area or facts that can't be entertained or gone into by the Hon'ble Tribunal

itself, can't be directed to be gone through by the Committee appointed by the Hon'ble Tribunal.

8. As per the Judgements of the Hon'ble Tribunal, providing (even extra) parking is NOT a 'substantial question related to the environment'. This doesn't violate any statutory provision OR there is no damage to the environment; as defined in s. 2(m).

9. The Hon'ble Tribunal Committee is not an Expert in EC & EIA. They don't become 'experts' just because they are called so. **They don't fit in the basic scheme, qualifications, and criteria of NABET to be accredited as an 'expert' in the subject.** As per MoEFCC, even the presentation of the proposal in appraisal meetings before SEAC & SEIAA is to be done by NABET accredited coordinator; and not a single Field Area Expert (FAE). As per MoEFCC Notification **14/03/2017** and also OM **07/07/2021** and **28/01/2022**, the studies like Environment Damage Assessment (EDA), Community & Resource Augmentation Plan (CRAP) and field studies are to be done by the respective FAE.

10. The Joint Committee Report (JCR) is misguided. It is exceeding the jurisdiction of the Hon'ble Tribunal and inter alia that of JCR. It is also factually incorrect. It is entering the areas that are not covered under the NGT Act.

MOST RESPECTFULLY SUBMITTED

1. I, Shashank P Paranjape, am working as Director of answering **Respondent No. 12**, M/s **Paranjape Schemes Construction Ltd. (PSCL)**, the **Project Proponent (PP)**, hereafter referred to as the Respondent. I have the knowledge, information, and authority to file this Affidavit in Reply. I have perused the Original Application (OA) and Additional documents submitted by the applicant.

2. I am filing this affidavit only with the limited purpose to oppose the OA on the issue of limitation and maintainability.

- a. Hopelessly barred by limitation
- b. There is no 'substantial question related to the environment' as defined in s. 2(m), as far as parking area construction is concerned
- c. Plural causes to be raised in a single application, is prohibited u/s.14 of the NGT Rules
- d. Reliefs are not consequential to the cause of action

3. I state and submit that the OA is hopelessly barred by limitation as the cause of

action with respect to the alleged violation first arose in the year 2006 when the construction of parking was started. Hence on the limitation grounds alone, it directly ousts the jurisdiction of this Hon'ble Tribunal to entertain, hear and adjudicate this application. Only when and once the Hon'ble Tribunal adjudicates on the issue of limitation, then the question of passing any directions **including** the appointment of any Joint Committee can be considered. Else, such order/s also shall be ultra-vires. **As such, it is of utmost importance that the limitation and maintainability issue must be decided at the outset.**

4. The Joint Committee was formed for finding facts only. Committee went beyond its jurisdiction. Committee could not have gone beyond what was within the powers of Hon'ble Tribunal. Committee was not qualified as an 'Expert' as required by NABET Scheme OR MoEFCC Notification 14/03/2017 or OM 07/07/2021. To be Field Area Expert (FAE) and EIA Coordinator, there are altogether different qualifications prescribed under NABET. Only NABET Accredited Consultants can do EIA, EMP, EDA and Remedial Plan and Community Resources Augmentation Plan. This can be appraised by SEAC and approved by SEIAA only. Powers of SEAC and SEIAA-Maharashtra can't be

diluted OR substituted OR delegated to any other Committee. MPCB is formed under Water and Air Acts. SEAC and SEIAA are formed under EIA Notification 14/09/2006 issued under EPA Act 1986. Their roles, functions, duties and expertise is different. The implementation of EIA Notification and required expertise for that is only with combination of NABET Accredited Consultant, SEAC and SEIAA. MPCB/CPCB has no role in it. Even if there is any error, the rectification and/error correction shall be done as per the scheme of Notification. Hon'ble Tribunal can't create or assign the statutory tasks to alternative Committee. This amounts to creation of a entity beyond the law. Such powers are not with the Hon'ble Tribunal under the NGT Act 2010. Merely because such Committee is appointed by taking members from CPCB, MPCB or Corporation, they don't become 'expert' as per the scheme of EIA Notification read with NABET requirements. As such the Joint Committee is not competent for anything beyond site visit and verification of facts, commensurate with their past experience and qualifications. But in any case, statutory tasks can't be given to any such Committee, bypassing the existing statutory authorities; i.e. SEIAA-Maharashtra in this present case. The Joint Committee will have to be set aside and rejected on this substantive law point alone.

5. The allegations are two folds u/s.15 seeking demolition or handover of the project site including all structures to the Government Authority. Whereas the cause of action “first arose” in the year 2009.

LIMITATION AND TIME-BARRED OA

6. The first Environmental Clearance was granted by MoEFCC to Respondent on 25/06/2007 [Ax. R1 ■ OA Page No. 41: Copy of Environmental Clearance]. The construction was completed as per the sanctioned plans, including the parking floors, in the year 2009 which included basement parking floors of an area of 12,110 m².

7. I state and submit that issues raised in the application, i.e., cause of action first arose on 09/09/2009 [Ax. D ■ : 1st Completion Certificate of PMC] when the 1st Part Completion Certificate was granted by PMC. It is 3953 days (10 years and 6 days) before the date of **filing of OA on 06/07/2020**. The date of **cause of action mentioned by the applicant** in OA No. 38/2020 is 17/12/2019 [Ax. R5 ■ OA Page No. 232 Point No. 232: Consent to Establish]. Respondent has already submitted these facts before the Joint Committee through the written

submission on **03/01/2022**. [Ax. P ■ : R-12 written submission to Joint Committee].

8. Further I want to state that the Respondent was not formally made party in this Original Application or the Interlocutory Application. The information is being given on the basis of the limited query received, without knowing the entire submissions in this matter on the record of the Hon'ble National Green Tribunal. No formal service was made OR copies of the OA / IA were ever given by the Applicant.

9. From the number of the OA, it has been filed in the year 2020. Respondent's first 'Environmental Clearance', 'Consent to Establish', and 'Consent to Operate', earlier completion certificate, and occupancy certificate, all of them were, much before the date of the filing of this application. The construction of the residential project started in the year 2006 as per the first sanction plan obtained from PMC and finally ended in the year **2009**. **The present residential project is already completed as per the EC issued by MoEFCC dated 25/06/2007 and the project is handed over to the concerned buyers, and the EC dated 20/09/2019 has been granted for one additional commercial building only.** The Diary of Events in this regard is

given in the table at the outset.

10. As can be seen from above, Respondent's construction was complete in all respect on 17/12/2009 [**Ax. F ■ : PMC Completion Certificate**] and the possession was handed over to the **bonafide** occupants by Deed of Declaration on 11/12/2009, [**Ax. E ■ : Deed Declaration between PP and Flat Owner**] which have not been made parties in this OA and IA. (The earlier two Completion certificates were granted on **09/09/2009** and **15/11/2009** for buildings A, B, C, and D). [**Ax. D ■ : PMC Completion Certificate**]

11. Further, as per the s.14 and 15, the Hon'ble Tribunal can entertain the '**substantial question related to the environment**' as defined in 2(m) of the '**National Green Tribunal Act 2010**' and the jurisdiction of the Hon'ble Tribunal is restricted by limitation period by s.14 and 15 up to a maximum of 6 months and 5 years, respectively, from the date of **cause of action first arose**. s.14 is the section of the NGT Act that defines and limits the jurisdiction of the Hon'ble Tribunal to entertain the applications under the original jurisdiction.

12. The applicant has not filed Form-II as prescribed for compensation u/s.15. He has not

claimed any 'relief, compensation, restitution' for himself. No Court Fees have been paid for the compensation claimed. As such this application can't be entertained u/s.15. The relief sought is non-consequential i.e., Demolition of the construction cannot be treated as a consequential relief.

13. I say and submit that PP also was not made the Respondent Party at the time of admission and when the detailed order was passed on **06/07/2021**. Hence these facts could not be placed on record OR brought to the notice of the Hon'ble Tribunal, for deciding even the preliminary issues like the limitation, jurisdiction, curtailing the ambit due to plural causes raised, non-consequential reliefs.

14. The present OA has been lodged on 06/07/2020 and in which Applicant mentioned that the first cause arose on 17/12/2019 which is 10 years and 6 days delayed from the first EC permission. As such the application is hopelessly barred for limitation u/s.14 and even s.15 of the NGT Act and so also u/s.15.

15. I state and submit that in the matter **MA 74/2015 in OA 10/2014(WZ) Lakhan Musafir V/s Sardar Sarovar Narmada Nigam Ltd.** has

held that s.14 and s.15 are to be read with s.18 jointly. [Ax. L ■ : NGT (WZ) Judgment dated 01/09/2015]. Please refer to Para 27 and 33 in that particular Judgement of the NGT WZ Pune. This order was further confirmed by the Hon'ble Supreme Court.

PLURAL CAUSES RAISED AND DATES WHEN THOSE FIRST AROSE

16. It is further submitted that the Original Application as it stands, is not maintainable in view of Rule 14 of National Green Tribunal (Practice and Procedure) Rules 2011. Plural causes are expressly prohibited in one application. The Applicant in his OA seeks relief against various causes like the violation of the EC conditions, non-performance of the statutory duty of the government employee, forfeiting the benefits of FSI and non-FSI, violation of the consent conditions, etc.; whereas Hon'ble Tribunal can only entertain a single cause of the action in one application or appeal as per s.14 of NGT Rules 2011.

NATIONAL GREEN TRIBUNAL (PRACTICES & PROCEDURE) RULFS 2011:

“14. Plural remedies. -An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief

provided that they are consequential to one another.”

17. Applicant has not filed any relief, or compensation for any of the heads as specifically prescribed under Schedule II and in Form-II.

18. Assuming but without admitting, non-compliance with the conditions of the permissions for ‘Consent to Establish’ or ‘Environmental Clearance’ is not a violation of the statute or legislature. **As explained by MoEFCC in OM 07/07/2021**, these are non-compliances at the most, of the permissions already granted. **[Ax. O■ : MoEFCC OM]**.

RELIEFS PRAYED

19. I say and submit that as per section 14 of NGT Rules 2011, only a single specific cause of action can be entertained in one application, and the applicant *may seek one or more reliefs, provided that they are consequential to one another.* The reliefs sought in the present application are absolutely non-consequential and not even related to that one single cause of action, that may survive after adjudication on maintainability.

20. The relief sought should be such as to

remediate the 'substantial question related to the environment' which has been raised as the cause of action in the application. The words 'relief, compensation, restitution' do not even impliedly include penalty, punishment, teaching a lesson, or lynching the PP in the name of the environment.

21. Seeking demolition of the construction or handing over the complete structure to Government Authority shows that the applicant has no concern for the damage to the environment but wants to damage the PP by threatening his business.

CAUSE THAT TRIGGERED THE LIMITATION MENTIONED BY THE APPLICANT

22. The Applicant mentioned in his OA that the cause of action first arose on 17/12/2019 i.e. When PP received the revised consent to establish expansion for an increased construction area of 14,163 sq.m. I state and submit that this by itself is not a 'substantial question related to the environment'. This is nothing but the artificial date mentioned by the applicant to mislead this Tribunal.

23. Applicant is aware of the first EC, and MPCB consents but purposely avoided these dates. i.e., 1st EC dated 25/06/2007, 1st Consent to Establish dated 02/12/2009, and 1st Consent to

Operate dated 02/08/2010 [Ax. R1, R2, R3 ■ OA Page No. 41, 46 and 51]. But Applicant knew that he would be barred on limitation therefore he has not emphasized on these details.

RELEVANT AND SUBSTANTIAL LAW POINTS THAT NEED TO BE CONSIDERED

- a) Whether the application has clearly stated the cause of action and when the dispute arose from that cause?
- b) Whether these allegations make out the case giving rise to 'substantial question related to the environment as defined in 2(m)?
- c) Whether it is a single cause as required in Rule 14, and all the prayers are the consequential remedies?
- d) Whether the plural remedies prayed including relief, compensation and restitution are consequential in nature and for remedying the evil?
- e) Whether there are any notified standards under the Water, Air, Environment Act for the illegality mentioned OR where violation of the Act/Rules have been alleged?
- f) Whether there is any prescribed mention in the Act/Rule/Notification as to when the

compliance has to be done. (e.g., unless the project is complete and the site is clear, development of the area under construction anyway can't be done.)

- g) Are there any Notified Standards of water in construction m^3/m^2 , use of solar power, use of LED, rainwater harvesting, % of the top-soil conservation, a limit on excavation, size of storm drains, compulsory % utilization of the sewage generated, tree plantation of trees/acre of plot or empty area, OR these are mere guidelines OR good practices?
- h) Does the non-conformity to the above, is a mere violation of the condition of the EC/Consent OR illegal or environmentally unsustainable, not helping the environment or polluting air/water?
- i) Whether the decision of the Supreme Court, after adjudication in a particular case OR laying down of the principle, gives the statutory power, to MPCB or SEAC or SEIAA also to apply it as Act or Rule OR it simply fills the vacuum till the formal law is made?
- j) Can the precedence of the past judgments of the Hon'ble Tribunal lay down the law/rule OR give powers to MPCB to follow those

Guidelines as law; even when legal formalities are not completed or followed?

- k) Can the 'polluter pays principle' be applied when there is a violation, but without even identifying, determining, and quantifying pollution and its effect on the surrounding environment?
- l) If the scientific statutory authority doesn't have time to do a proper investigation OR has not done any investigation, then can there be a presumption that there is pollution even when there is no evidence to that effect?
- m) When all compliance measures are in place, whether each non-compliance, late application for renewal of consent, or late grant of consent by MPCB, will cause pollution?
- n) Whether a penalty will be based on the total project cost; even when the project is not executed/ operational as yet?
- o) Whether penalty can be imposed over the entire period of violation when the impact from the activity was only for a short period; say during the construction phase?
- p) Whether sound levels and fugitive emissions, at the work area/source, can be considered to

be polluting when their effluent levels at the property boundary are within the limits?

- q) Whether MPCB can do the adjudication themselves when the funds are to be deposited with them only OR when there is no such statutory provision for MPCB to collect and retain the funds?
- r) When the NGT Act s.24 provides for collecting the funds in 'Environmental Relief Fund' (ERF), can the Hon'ble Tribunal or MPCB keep it in any other account, contrary to Act?

**NO SUBSTANTIAL QUESTION AS DEFINED
IN 2(M) OF THE NGT ACT 2010**

24. Respondent states that none of the allegations made *ab-initio* raise the '**substantial question related to environment**' as specifically defined in The National Green Tribunal Act 2010 u/s.2(m).

2(m) "substantial question relating to environment" shall include an instance where, —

*(i) there is a **direct violation** of a specific statutory environment obligation by a person by which, -*

*A. the **community at large** other than an individual or group of individuals **is***

***affected** or likely to be affected by the environmental consequences; or*

B. the gravity of damage to the environment or property is substantial; or

*C. the **damage** to public health **is broadly measurable**;*

*(ii) the environmental consequences relate to a **specific activity** or a **point source** of pollution;*

25. There are many vague allegations and averments made, but there is no specific cause of action mentioned in the application and the date of that cause.

26. Applicant has not given any data of his own which prima facie at least would show the violation vis-à-vis the condition of the 'Environmental Clearance' and/or the 'Consent to Establish/Operate'.

27. Applicant has to show the direct violation of a specific statutory environmental obligation, by which the community at large is affected. OR the gravity of damage to environment or property has to be substantial OR damage to public health is broadly measurable OR the alleged environmental consequences should relate to a specific activity or a point source. Applicant's vague allegations fall flat

on all these counts.

JUDGEMENT ON LIMITATION (EXTRACTS)

28. Hon'ble NGT Principal Bench Judgement: In matter no. OA No.31/2020 (Shashikant Kamble vs M/s Embassy Property Development Pvt Ltd), the Hon. Principal Bench of the NGT has upheld the objection of limitation and dismissed the application as no part of the cause of action had arisen within five years prior to the filing of OA. **[Ax. R ■ : NGT Judgment dated 10/02/2022]**. I say and submit that the Hon'ble Tribunal has no power to condone the delay beyond the limitation period.

Page: 2 Para: 5,6 & 7

“5. The PP has filed a reply inter alia raising the plea of limitation. It is submitted that no part of cause of action has arisen within five years prior to filing of the OA. No continued violation pointed out. Thus, the Tribunal cannot entertain the application beyond statutory limitation.

6. We have heard learned counsel for the parties.

7. We find that the petition was filed on 04.02.2020 and no cause of action in five years preceding the filing of OA has been pleaded. In view of the above, we uphold the objection of limitation and dismiss the application. I.A. No. 136/2020 also stands disposed of.”

29. Hon'ble NGT (WZ) in its own judgment i.e., Appeal No. 37/2012 (Real Gem Buildtech Pvt. Ltd. vs State of Maharashtra) stated that there is no adverse environmental impact observed for providing basement parking. [Ax. I ■ : NGT Judgment dated]

Page:3 Para: 5

*“Upon hearing learned Counsel for the parties, it is amply clear that the impugned order does not reflect as to whether rejection of the EC for three basements was done on ground of any adverse environmental impact. **In fact, we find that no environmental issue is involved in the matter. The material on record does not show that the third basement is likely to cause any serious impact on the environment.**”*

30. Also, in APPEAL NO.77 of 2013(WZ) i.e., Arihant Realtors Hon'ble NGT clarified that **parking space is essential and important that EC, NMC DR rules, etc.** [Ax. J ■ : NGT Judgment dated 08/04/2015]

Page: 25 Para: 14 & 15

“The impropriety on the part of authorities, should not cause heavy loss to Respondent No.1, which may ultimately cause eviction of occupants

of transit dwellers, who are expecting shifting to the buildings constructed for their rehabilitation. Under these circumstances, in our opinion, the construction and EC obtained by Respondent No.1, for SRA scheme, shall be treated as fate-accomplished.....

The Applicants who are claimants of parking spaces of the Appellant society, are required to be accommodated in the remaining construction of the parking area shall be provided to them at stilt and first floor without considering other parts of the said buildings of Pandit SRA CHS Ltd,”

31. Hon'ble NGT Western Zone Bench Judgment: MA 74/2015 in OA 10/2014(WZ) Lakhan Musafir V/s Sardar Sarovar Narmada Nigam Ltd.: (s.14 is to be read with s.15 and 18, jointly)

Page: 38, Para: 27 of the Judgement

“Coming to Sub-clause (3) of Section 15, it is manifest that any Application for grant of compensation or relief or restitution of property, or environment under Section, can be entertained by the Tribunal only if it is made within period of five (5) years from the date on which cause of action for such compensation or relief first arose. Here is the distinguishing line between Sub-

Section (1) of Section 14 and Sub-section (3) of Section 15 of the NGT Act, 2010. While Section 14 (3) governs domain of “adjudication of dispute arising out of implementation of enactments specified in Schedule-I, or any substantial question relating to environment and then the limitation period would trigger from date on which cause of action for ‘such dispute’ arose first”. Sub-section (3) of Section 15, relates to limitation period of five (5) years in respect of cause for such “compensation or relief” whatever it may be, first arose. There is much difference between process of adjudication of dispute and process of making provision for grant of relief or restitution of property/environment. In our opinion, Section 15 of the NGT Act, 2010, gives discretion to the Tribunal to provide for relief and compensation to victims of pollution, restitution of property damaged due to degradation of environment for such area etc. Needless to say, reliefs sought under Section 15, are not required to be mandatorily granted unless and until adjudication of dispute under Section 14, is completed. For example, compensation to victims of pollution cannot be contemplated unless and until the dispute regarding environmental question arising out of implementation of enactments specified in Schedule-I, or legal right pertaining to violation of mandate of environment

is settled, which could show that such Applicant is victim of any violation of enactments specified in Schedule-I, of the NGT Act, 2010, or that it is clear case of an accident, admittedly being result of environmentally adverse impact. In other words, Section 15, cannot be isolated from Section 14 and Section 18 of the NGT Act. All these provisions will have to be considered together.”

Page: 50, Para: 33 of the Judgment

“We are aware that this Tribunal is not bound by procedure laid down by the code of Civil Procedure, 1908, but shall be guided by the under principles of natural justice, as provided under Section 19(1) of the NGT Act, 2010. At the same time, Sub-Section (4) of section 19, gives power to the Tribunal which indicate that the NGT has all trappings of “Civil Court”. The power to restitution a property under the code of Civil Procedure, 1908, is provided under Section 144, which reads:

“Section 144

144. Application for Restoration.-(1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the

application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified]; and, for this purpose, the Court may make any orders, including orders for the refund, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order].

[Explanation- *For the purposes of sub-section (1) the expression “Court which passed the decree or order’ shall be deemed to include-*

- (a)** *Where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdictions, the Court of first instance;*
- (b)** *Where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;*
- (c)** *Where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]*

2. No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)”

Perusal of Section 144 of Civil Procedure Code, 1908, reveals that restitution depends upon final outcome of adjudicatory process. It would also depend upon any variance or subsequent orders passed in the Appeal. The adjudicatory process is, therefore, pre-condition, may be either interim adjudicatory process or final one, but prior to adjudicatory of dispute, the order for restitution in Application under section 15 read with Section 18, in our opinion, per-se, may not be within legal domain, having regard to scheme of Chapter-III of the NGT Act, 2010.

32. I state and submit that the provisions of the NGT Act are being misused by the chronic litigants and RTI Activists to harass and extort from the litigants even when the project is completed way back. Applicant submitted the date of the first cause of action as 17/12/2019 whereas the project was completed and handed over in 2009.

33. I submit that applicant has unnecessarily invoked s.15 only to take advantage of the limitation period of six months corresponding to that section. Even then it is not in the limitation

period. Even under this section, which provides for *'relief, compensation, and restitution,* there are corresponding eligibility criteria as to who can claim that. The applicant is not claiming any relief that would remediate the cause of action OR reverse the damage to the environment. Reliefs are required to be consequential to each other. Mere reading of prayers shows that those are not the reliefs consequential to each other. Further, they have no bearing or relevance to correct the cause of action as stated in OA.

34. Those reliefs are not for any environmental relief, compensation, or restitution but to threaten the Respondent, terrorize him and create fear in his mind.

35. I say and submit that the delay is not condonable as much as the Hon'ble Tribunal has no power to condone the delay beyond the limitation period. There is no prayer to that effect for condonation of delay. There is no justification given for the delay caused OR as to how the applicant was prevented from filing OA in time. Even the extra period of 60 days beyond the limitation, doesn't help in fitting the cause within the period of limitation. Waiver from condonation of the delay also is not a matter of right. The applicant has neither prayed for condonation of any delay nor

shown by giving sufficient cause as to how he was 'prevented' from applying in time.

36. I state and submit that the Hon'ble Tribunal is formed to entertain only 'substantial question related to environment' as defined in 2(m) and dispose of them within six months. The flood of frivolous applications is obstructing the Hon'ble Tribunal in granting reliefs in real intended disputes and hence the matters are remaining pending over six years instead of six months. Hence the issue of maintainability, trimming of the application, keeping only one single cause in one application, and restricting the matter only related to Acts in Schedule-I, is of utmost importance.

National Green Tribunal Act 2010: s.18(3)

The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

37. The grant of the Consent to Establish i.e., 17/12/2019 [Ax. R5: ■ OA Page No. 232].is an artificially created cause by the

applicant. This date has no standing in the eyes of law or for counting the period of limitation u/s.15. Whereas Respondent has received the Environmental Clearance (Expansion) from the State of Maharashtra dated **20/09/2019** [Ax. N ■ : Copy of Environmental Clearance (Expansion) dated 20/09/2019]. The applicant fails to explain WHY he has not considered the date of the Environmental Clearance as a cause of the action or did not make an appeal to the appellant authority as per the provision of EIA notification 2006. In fact, as per the Respondent's submission, both dates are irrelevant and not generated the first cause of the action

38. Applicant making an allegation against the construction area mentioned in the first environment clearance dated **25/06/2007** and taking the advantage of the limitation by considering or showing the cause of action taken place in the year 2019. Whereas this residential project was completed in the year 2009 and handed over to the bonafide buyer in the year 2009 only.

39. Applicant very clearly and boldly without any ambiguity mentioned the date for triggering the limitation as the date of grant of the consent to establish dated **17/12/2019**; which by itself can't

be the cause of triggering the period of limitation.

40. Respondent further wants to submit that the provisions of the NGT Act are being misused by the chronic litigants and RTI Activists to harass and extort from the litigants, even when the projects are completed way back.

ADDITIONAL INFORMATION

41. I say and submit that the project was completed and occupied way back in 2009. For the construction of the residential project consisting of 4 wings (A, B, C, D) each with Lower Parking + Upper Parking + 11 floors along with a clubhouse, Respondent had taken Environmental Clearance from the Ministry of the Environment and Climate Change on **25/06/2007**. Subsequently taken the consent to establish and operate from the MPCB and handed over the project to the users. Now in 2019 due to a change in the DC Rules, the potential gets generated, and therefore Respondent has submitted an application for the Expansion of Environmental Clearance. The same was received on **20/09/2019**. Thereafter as per the provision of the Water (P&CP), Act 1974 and Air (P&CP) Act, 1981 Respondent immediately applied for Consent to Establish before starting the project, which was granted on **17/12/2019**.

42. I further submit that the EC dated **25/06/2007** was issued as per the provisions of para 12 of the EIA Notification 2006. Therefore, the FSI and non-FSI areas were not mentioned. In fact, as per this Notification, the construction area was not the qualifying criteria at all. The criteria were built-up areas i.e., covered areas on all floors. However, as per the prevailing Development Control Rules of PMC, non-FSI areas such as parking floors & services were not to be included in the covered area/built-up area calculation. This concept of considering non-FSI in the scope of EC came later after the publication of the EIA Notification of **04/04/2011 [Ax. H ■ : MoEFCC notification dated 04/04/2011]**.

43. Respondent had submitted the project layout, built plans, and proposed Built-up Area Statement to the Expert Appraisal Committee of MoEFCC along with the application form, and the same details were submitted to MPCB as well. Though the non-FSI areas of parking, balconies & services were not separately mentioned in the application as per the prevailing rules (as explained in Para 19 above), the detailed plans pertaining to parking, balconies & services plans were submitted with the application and were appraised by the EAC while granting the EC dated **25/06/2007**. Therefore, there is no violation in the old project.

Respondent has already submitted these details to the Joint Committee through a written submission.

44. Subsequently, all permissions from Corporation, under MRTP/DC Rules and Consent from the MPCB obtained accordingly on that basis, exactly for whatever area was planned, proposed, appraised, and granted in the EC. The construction also was exactly as per those details and drawings. The Corporation also gave us a Completion Certificate and Occupancy Certificate on that basis on **17/12/2009**.

45. HOWEVER, while applying for the expansion on 30/07/2018, PP erroneously forgot to separately mention the non-FSI area of **13,904 sq.m** towards the parking, services & balconies of the residential buildings, which was already completed as per the earlier sanctioned plans, EC and Consent in the year 2009. Whereas, the FSI area of the residential buildings, was mentioned as higher than the actual FSI by 1591 sq.m. (It was mentioned as **22593 sq.m.**(as per previous EC) in our application whereas the actual FSI area of the residential buildings is **21002 sq.m** as per Sanctioned Plan).

Thus, the net difference, due to these errors, is as follows –

13904 sq. m.	(non-FSI of parking, services, and balconies not included in the BUA of our application)
- 1591 sq. m.	(Excess FSI of residential buildings mentioned in our application)
= 12313 sq. m.	Net Difference of BUA which was not separately mentioned in our application & subsequent EC

46. The parking, services & balcony area is for the purpose specified and is provided as per the DC Rules under MRTP Act. This non-FSI area was not mentioned in the earlier ECs separately. The area corresponding to parking, services, and balconies was not counted in FSI and hence it was not reproduced in the EC letter also.

47. This area was already appraised in the first EC dated **25/06/2007** through the conceptual plan. This area was also mentioned as an "existing" parking area in the PMC Sanctioned plan No.CC/319/19 dated **17/05/2019** [**Ax. R4 ■ OA Page No. 163: PMC revised Sanctioned**] which was submitted and produced before the SEIAA during the meeting dated **29/08/2019**. The

reference number of the sanctioned plan 17/05/2019 is mentioned in the minutes of the SEIAA meeting dated 29/08/2019 as well as the EC letter dated 20.09.2019. After considering all this information only and based on these submissions the SEIAA granted the second EC dated **20/09/2019**. Hence, it is clear that PP has not suppressed any information from the authorities while obtaining the said EC.

48. Further, PP has pointed out this error now simultaneously with the submission to SEIAA-Maharashtra, for correction of EC with the inclusion of the non-FSI Area (Parking & Services) which was not stated separately in our application for EC expansion, which was later granted on **20/09/2019**. [**Ax. N ■ : SIA / MH / MIS / 251752 / 2022: Application for Correction of EC submitted to SEIAA**]. There is not going to be any Expansion or Modernization due to this, as this was already covered, considered, and granted in the first EC of 2007 itself.

49. We also hereby clarify that it did not change our category from 20,000 to 1,50,000 sq. m to >1,50,000 sq. m (i.e., the projects requiring EIA Study). As such, we did not escape any rigor of EIA Notification or did not get any benefit out of that, due to this error of not separately mentioning

the non-FSI area.

50. Applicant is creating confusion for the Hon'ble Tribunal regarding the old approvals and new approvals given by PMC, SEIAA Maharashtra, and MPCB.

COMMITTEE WAS APPOINTED WITHOUT HEARING RESPONDENT

51. Hon'ble NGT through Daily Order dated 06/07/2021 appointed the joint committee for a field visit, interaction with stakeholders, and providing the report to the Hon'ble Tribunal. The committee was comprised of CPCB, SEIAA, District Magistrate, and MPCB.

52. Respondent has a serious objection against the appointment of this joint committee. Hon'ble Tribunal has not mentioned who should visit the site and what are the criteria for the persons or members who are supposed to visit the site.

53. Respondent strongly oppose the members who had visited the site. Hon'ble Tribunal was not aware of the educational qualification and expertise area of that member.

54. This case is related to the construction and the related violations; therefore, it is to be

considered or assumed that the members of the concerned organization should know or be aware of the issues related to the building construction and the approval process for the same. The person who supposes to visit the site and check or verify the allegations should have a thorough knowledge of civil or building construction.

55. The person doesn't become an 'expert' just because he /she is called so. **They don't fit in the basic scheme, qualifications, and criteria of NABET to be accredited as an 'expert' in the subject [Ax. K ■ : NABET Scheme and excel sheet for qualification criteria]**. As per MoEFCC, even the presentation of the proposal in appraisal meetings before SEAC & SEIAA is to be done by NABET accredited coordinator; and not a single Field Area Expert (FAE). As per MoEFCC Notification **14/03/2017** and also OM **07/07/2021** and **28/01/2022**, **[Ax. M ■ : MoEFCC notification dated 14/03/2017]** and **[Ax. Q OM dated 28/01/2022]** the studies like Environment Damage Assessment (EDA), Community & Resource Augmentation Plan (CRAP) and field studies are to be done by the respective FAE. MOEF its OM dated 18/03/2010 also cleared that; **[Ax. G ■ : MoEFCC OM dated 18/03/2010]**

“No final EIA/EMP from any Project Proponent prepared by the Non-accredited Consultant will be entertained after 1st July, 2010.”

56. Joint committee has not submitted the list of the expert and their expertise field area and qualification before the Hon’ble Tribunal before visiting the site and preparing the assessment report of the alleged project.

57. Hence Respondent No.12 submits that the application needs to be dismissed on this ground of limitation as well as wrong assessment of the project, without admitting it OR passing any further order by the Hon’ble Tribunal in this matter. Once it is clear that the Hon’ble Tribunal doesn’t have the jurisdiction, then there is no power for the Hon’ble Tribunal to entertain this application, go into merits, and/or pass any kind of order. The earlier Daily Order passed without hearing Respondent No.12 or adjudicating on the point of limitation, also needs to be recalled.

And for this act of kindness, as duty bound shall ever pray.



x

Place: **Mumbai** / pune
Date: **07/01/2023**

DEPONENT
Respondent No. 12



AFFIDAVIT AND VERIFICATION

I Shashank Paranjape, age about 61 years, resident of 4, Rajat Apartment, 759/33, DB Deodhar Rd, Deccan Gymkhana, Pune 411004 do hereby state that **I have submitted this Affidavit on solemn affirmation and oath.**

I have verified that the facts are true to my personal knowledge. I have not suppressed any material fact known to me and relevant to this matter. Translation of it has been explained to me in brief in a language that I can understand.

[Handwritten signature]
x

Date: **07/01/2023**
Place: **Mumbai/ Pune**

DEPONENT
Respondent No. 12

Identified by & before me:

Advocate

[Handwritten signature]



BEFORE ME

[Handwritten signature]
Narendra C. Walimbe
Advocate & Notary Govt. of India
Regd. No. 20204

Noted and Registered

at Sr. No. 214/2023
Date: 7.1.2023

Narendra C. Walimbe
B.Com, LL.B.,
ADVOCATE & NOTARY
4/64, Parinita Housing Society,
Near Shahu College, Laxminagar,
Pune-09. (Whatup)-9422084700



BEFORE THE HONOURABLE
NATIONAL GREEN TRIBUNAL
 WESTERN ZONE BENCH, PUNE
 Original Application No. 38 / 2020

VAKALATNAMA

BETWEEN

Tanaji B. Gambhire

.....

Applicant

VERSUS

Union of India & Ors

.....

Respondent/s

We/I hereby appoint the following Advocate/s to represent us/me and sign wherever required on our/my behalf.

Advocate Sachin S. Gore सचिन गोरे

M.Sc. (Environmental Science), L.L.M Crime.

Office: 601, 6th Floor, Rohit Park II, S.No.71/3A, Morya Col., Near Tapkir Vidyalaya, Tapkir Chowk, Kalewadi, Pimpri, Pune-411017

Email: ssgore2005@gmail.com Cell: 7350212877

along with associate Advocate
 Raghunath B. Mahabal

Accepted subject to payment of fees.



Sachin S. Gore

Adv. Sachin S. Gore

Date: 09.12.2021

Place: Pune



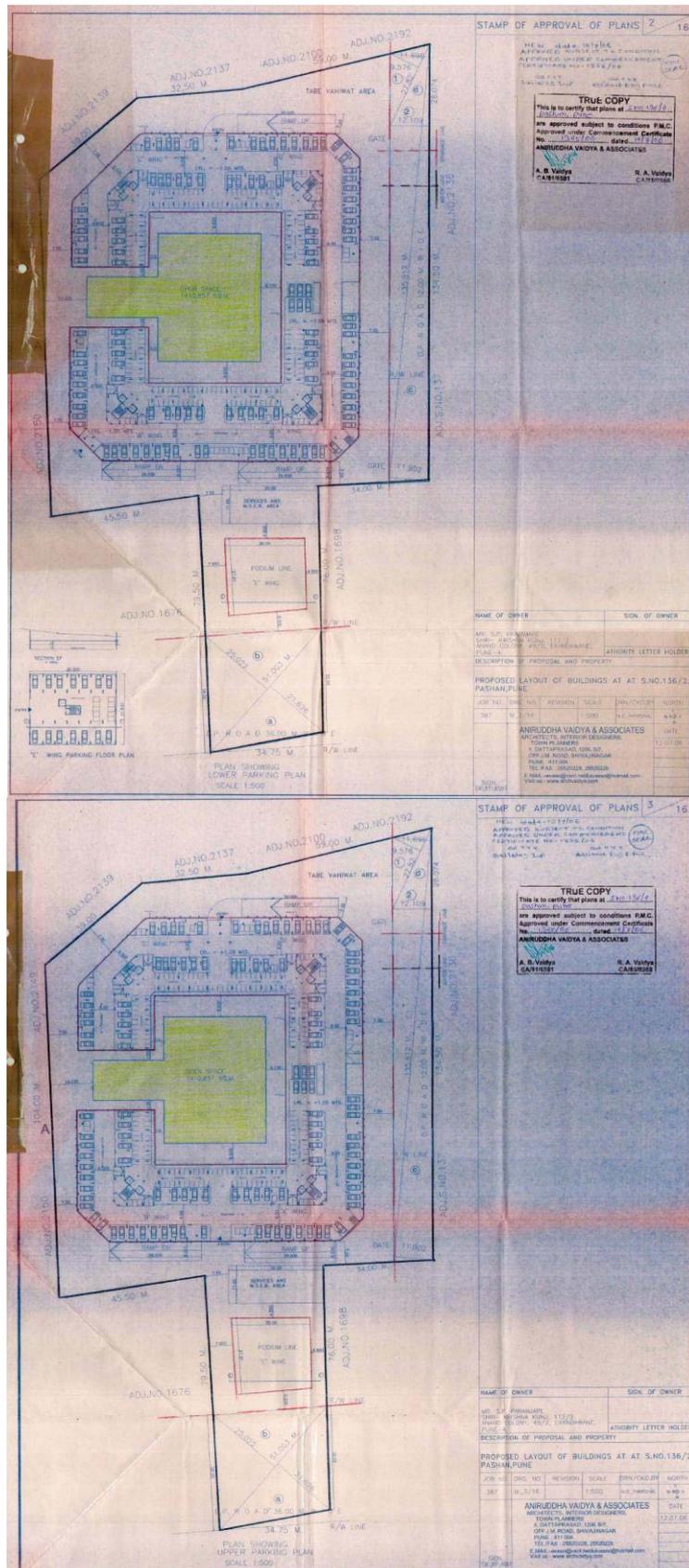
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Respondent No. 12

M/s. Paranjape Scheme
 (Construction) Pvt. Ltd.



Sanctioned Plan with Parking 12/07/2006



Note: Respondent will submit the hard and enlarged copy of this Annexure at the time of the argument.

Ax- B

383



21/670/88 - SAUW



Paranjape Schemes (Construction) Ltd.
A legacy... of integrity and quality!
AN ISO 9001:2000 COMPANY

House, CTS No. 111+111/2 Anand Colony, Near Suvarnarekha Dinning Hall,
Karnatak High School Lane, Off Prabhat Road, Pune 411 004.
91-20-30223344/25440986/25462128 ■ Fax : 91-20-25460986
mail : paranjape@bom3.vsnl.net.in ■ Visit us at : www.paranjapeschemes.com

To,

Date- 30/11/06

The Additional Director-IA-III
Ministry of Environment & Forest,
5th Floor, Paryavaran Bhavan,
CGO Complex, Lodi Road
New Delhi-110014

Dr. Bharat Bhatnagar, Director -IA-
Kind Attn:- ~~Dr. K.C. Bhatnagar, Additional Director IA~~

Sub: Submission of EIA/EMP report along with Questionnaire & Schedule-II form

Dear Sir,

Please enclosed the following documents for your kind perusal

1. EIA/EMP Report
2. Executive Summary
3. Questionnaire & Schedule-II(Fully filled)
4. Site plan/Layout Plan/Location map of the project
5. Master Plan
6. Topographic Map
7. Development plan

We kindly request you to enlist the project for presentation to get Environmental Clearance.

Thanking you,

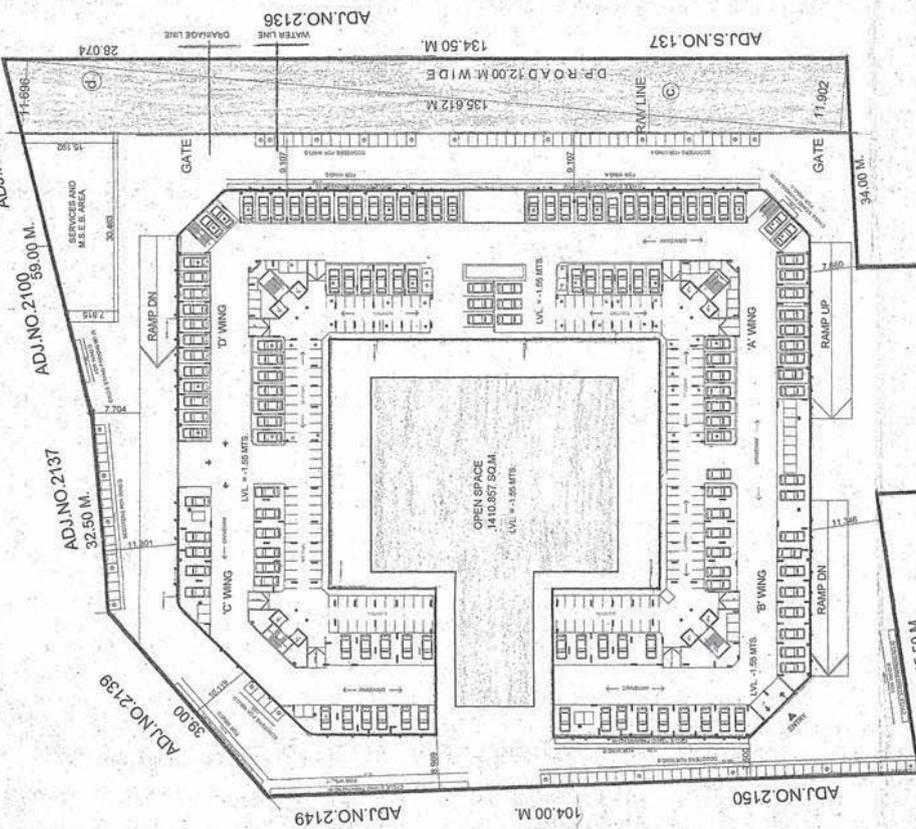
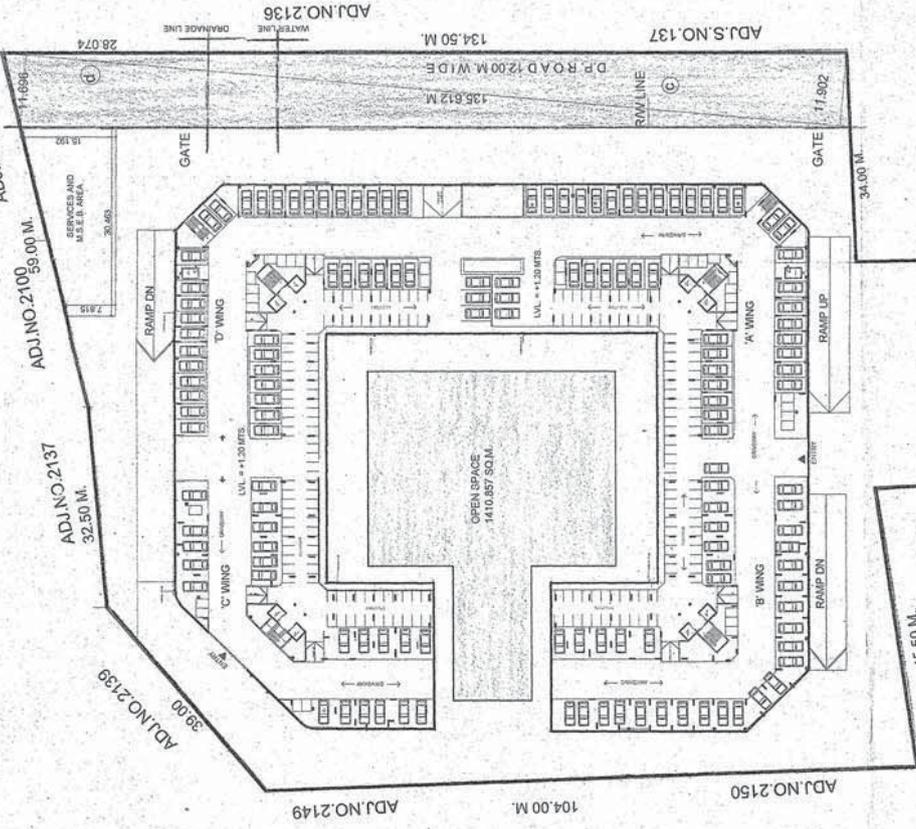
For:- PARANJAPE SCHEMES (CONSTRUCTION) LTD.

(AUTHORISED SIGNATORY)

T.C.

385
 APPROVED SUBJECT TO CONDITION
 APPROVED UNDER COMMENCEMENT
 CERTIFICATE NO-3832/08
 Building No. Sd xxx
 PWA Assistant P.W. P.M.C.

TRUE COPY
 This is to certify that plans at No. 134.50 M. / 135.612 M. / 135.612 M. / 134.50 M. are approved under Commencement P.M.C. Certificate No. 3832/08 dated 24/03/08.
 ANIRUDDHA VAIDYA & ASSOCIATES
 A. B. Vaidya
 CA/816581
 R. A. Vaidya
 CA/805963



PARKING AREA STATEMENT A, B, C, D, WING

NO.	AREA	ADJACENT TO	TYPE	NO. OF SPACES				
1	1887	21	22	22	185	208	208	208
2	24	02	03	04	05	06	07	08
3	28	01	02	03	04	05	06	07
4	29	01	02	03	04	05	06	07
5	29	01	02	03	04	05	06	07
6	29	01	02	03	04	05	06	07
7	29	01	02	03	04	05	06	07
8	29	01	02	03	04	05	06	07
9	29	01	02	03	04	05	06	07
10	29	01	02	03	04	05	06	07
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98	29	01	02	03	04	05	06	07
99	29	01	02	03	04	05	06	07
100	29	01	02	03	04	05	06	07

PLAN SHOWING UPPER PARKING PLAN SCALE 1:500

PLAN SHOWING LOWER PARKING PLAN SCALE 1:500

NAME OF OWNER: MR. S. P. PARMAR, 1922 ANAND COLONY, 4th FLOOR, PUNE-4.

DESIGNER OF PROPOSAL AND PROPERTY: ANIRUDDHA VAIDYA & ASSOCIATES ARCHITECTS, INTERIOR DESIGNERS, 4, DATTAPRASAD, 1208, 87, OFF. J.M. ROAD, SHIVAJINAGAR, PUNE-411 004. TEL: 22522228. E-MAIL: anvd@shri.net.in, anvd@anvd.com. Web site: www.anvd.com

SCALE: 1:500

DRG. NO.: 387

REVISION: MD-2/15

DATE: 24/03/08

385

ANIRUDDHA VAIDYA & ASSOCIATES ARCHITECTS, INTERIOR DESIGNERS, 4, DATTAPRASAD, 1208, 87, OFF. J.M. ROAD, SHIVAJINAGAR, PUNE-411 004. TEL: 22522228. E-MAIL: anvd@shri.net.in, anvd@anvd.com. Web site: www.anvd.com

STAMP OF APPROVAL OF PLANS

Revised TDR Sanctioned Plan 30/03/2009

PARKING AREA STATEMENT A, B, C, D WING							
PARKING AREA STATEMENT	TOTAL	PARKING REQUIRED			PARKING PROVIDED		
		CAR	SCOOTERS	CYCLE	CAR	SCOOTERS	CYCLE
1 TENEMENTS 80 TO 150 SQ.M	168	01	02	02	168	336	336
NEW RULE 1 TENEMENTS 80 TO 150 SQ.M	24	02	03	04	48	72	96
NEW RULE 2 TENEMENTS 40 TO 80 SQ.M	46	01	04	04	23	92	92
TOTAL	238				239	500	524
AREA REQD UNIT		12.50	3.0	0.700	2987.50	1500	366.80
TOTAL AREA REQUIRED	4854.30 SQ.M.				2887.50	1449	352.80
AREA AVAILABLE FOR PARKING	12110.314 SQ.M.						

RETYPE

PARKING AREA STATEMENT A, B, C, D WING							
Parking area statement	Total	Parking Required			Parking Provided		
		Car	Scooters	Cycle	Car	Scooters	Cycle
1.Tenements 80 to 150 Sq. m	168	01	02	02	168	336	336
New Rule 1 Tenements 80 to 150 Sq. m	24	02	03	04	48	72	96
New Rule 2 Tenements 40 to 80 Sq. m	46	01	04	04	23	92	92
Total	238				239	500	524
Area Requirement		12.50	3.0	0.700	2987.50	1500	366.80
Total Area Required		4854.30 Sq. m			2887.50	1449	352.80
Area Available for Parking	12110.314 Sq. m						

पुणे महानगरपालिका

शिवाजीनगर, पुणे ४११००५.



Ax-D

बांधकाम नियंत्रण कार्यालय

क्रमांक BPDPI/इमोन/१३१/१०२

दिनांक ०९/०९/०९
०२५१३

[मुंबई प्रांतिक महानगरपालिका अधिनियम, १९४९ कलम २६३ (१) अन्वये]

पार्ट भोगवटा पत्र (क. I)

श्री. / श्रीमती एम्. पी. परांजपे (PAM) / श्री. मे. बी. वैद्य (ला. आर्कि.)

राहणार ४ व ५, दत्तप्रसाद अपार्टमेंट, १२०६ ब/७, जंगली महाराज रोड सोमोर शिवाजीनगर, पुणे ४११००५.

यांस -

आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलमे २५३/२५४ व एम्. आर. टी. पी. अॅक्ट

कलमे ४५/६९ प्रमाणे पुणे, पेठ पाझाप धरांक फायनल प्लॅट क्र. /

सर्व्हे क्र. १३६/२ टी. पी. स्कीम नंबर यांत इमारतीचे

इकडील संमती पत्र / कमेन्समेंट सर्टिफिकेट क्रमांक १३२५/०६, दिनांक १२.१०.२००६
द. सं. नं. ४३६५/०६ दि. १६/३/०६ क. सं. प. नं. ०९८४/०६ दि. २६/६/०६
अन्वये बांधकाम करण्यास परवानगी देण्यात आले आहे. सदरील संमती पत्र / कमेन्समेंट सर्टिफिकेट प्रमाणे सर्व /
द. सं. नं. ३८३२/०८ दि. ३०/३/०९

कोही भागाचे काम पुरे झाल्याबद्दल व सदर नवीन बांधलेल्या इमारतीची जागा उपयोगात आणायच्यास संमती गिळण्याबाबत दिनांक २८.१०.२००९ रोजी अर्ज केल्यावरून आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलम २६३ (१) प्रमाणे कळविण्यात येते की, खालील नमूद केलेल्या अटीवर पुढील वर्णनाचा इमारतीचा भाग उपयोगात आणण्यास संमती देण्यात येत आहे.

उपयोगात आणायच्या बांधकामाचे वर्णन

मान्य. नकाशा नं. १३१

अं. क्र.	मजले	विंग 'A'	विंग 'B'	विंग 'जी'	विंग 'डी'
१	टोमर पार्किंग				
२	गार्डन पार्किंग				
३	पहिला मजला	३०१ ते ३०६ असे ६ फ्लूयर्स	३०७ ते ३०८ असे २ फ्लूयर्स	३०९ ते ३०९ असे ४ फ्लूयर्स	३१० ते ३१० असे ६ फ्लूयर्स
४	दुसरा -1-	२०१ ते २०१ असे ६ फ्लूयर्स	२०१ ते २०६ असे ६ -1-	२०१ ते २०४ असे ४ -1-	२०१ ते २०६ असे ६ -1-
५	तिसरा -1-	३०१ ते ३०६ असे ६	३०१, ३०२, ३०४ ते ३०६ असे ५	३०१ ते ३०४ असे ४ -1-	३०१ ते ३०६ असे ६ -1-
६	चौथा -1-	४०१ ते ४०६ असे ६ फ्लूयर्स	४०१ ते ४०६ असे ६ फ्लूयर्स	४०१ ते ४०४ असे ४ -1-	४०१ ते ४०६ असे ६ -1-
७	पाचवा -1-	५०१ ते ५०६ असे ६ फ्लूयर्स	५०१ ते ५०६ असे ६ फ्लूयर्स	५०१ ते ५०४ असे ४ -1-	५०१ ते ५०६ असे ६ -1-
८	सहावा -1-	६०१ ते ६०६ असे ६ -1-	६०१ ते ६०६ असे ६ -1-	६०१ ते ६०४ असे ४ -1-	६०१ ते ६०६ असे ६ -1-
९	सातवा -1-	७०१ ते ७०६ असे ६ -1-	७०१ ते ७०६ असे ६ -1-	७०१ ते ७०४ असे ४ -1-	७०१ ते ७०६ असे ६ -1-
१०	आठवा -1-	८०१ ते ८०६ असे ६ -1-	८०१ ते ८०६ असे ६ -1-	८०१ ते ८०४ असे ४ -1-	८०१ ते ८०६ असे ६ -1-
११	नववा -1-	९०१ ते ९०६ असे ६ -1-	९०१ ते ९०६ असे ६ -1-	९०१ ते ९०४ असे ४ -1-	९०१ ते ९०६ असे ६ -1-
१२	दहावा -1-	१००१ ते १००६ असे ६ -1-	१००१ ते १००६ असे ६ -1-	१००१ ते १००४ असे ४ -1-	१००१ ते १००६ असे ६ -1-
१३	अकरावा -1-	११०१ ते ११०६ असे ६ -1-	११०१ ते ११०६ असे ६ -1-	११०१ ते ११०४ असे ४ -1-	११०१ ते ११०६ असे ६ -1-
	सुट्टी	६४ फ्लूयर्स	६४ फ्लूयर्स	६४ फ्लूयर्स	६४ फ्लूयर्स

नगर अभियंता कार्यालय
पुणे महानगरपालिका
फोन नं. १ मा. नि. / वि. नं.
जाणक नं. -
दिनांक -

सह-प्रविष्टात मान्य नकाशा नं. १३१
कोणत्याही बांधकामे (घरा, कार्यालय अंतराळ इतरेसबाबत) बांधकामासाठी, कायदा अगरीस बांधकामासाठी (सहकारी, इत्यादी.) कोणत्याही बांधकामासाठी म देता सदरची संपूर्ण अनधिकृत बांधकामात वापरण्यात येतील व त्यासाठी येवतास खर्च फ्लॅट धारक/भागेदक बांधकाम घसूस करण्यात येईल.

राहायिक अभियंता,
बांधकाम नियंत्रण क्र.
पुणे महानगरपालिका.
H.K.

25

Magnolia Apartments

Deed of Declaration

2000

JCA
2-4-2



Friday, December 11, 2009
2:36:37 PM

Original

नोंदणी 39 म.
Regn. 39 M.

पावती

पावती क्र. : 9142

याचाचे नाव पाषाण

दिनांक 11/12/2009

दस्तऐवजाचा अनुक्रमांक

हवेली 09009 2009

दस्ता ऐवजाचा प्रकार



सादर करणाराचे नाव: पोपट किसन जाधव व अन्य 24 तर्फे कु. मु. व मे. परांजपे स्किम्स
(कम्प्युटरेशन) लि. तर्फे जायरेवट परिस. पी. परांजपे तर्फे वि. कु. मु.

नोंदणी फी	:-	100.00
नक्कल (अ. 11(1)), पृष्ठांकनाची नक्कल (आ. 11(2)), रुजवात (अ. 12) व छायाचित्रण (अ. 13) -> एकत्रित फी (81)	:-	1620.00
एकूण	रु.	1720.00

आपणास हा दस्त अंदाजे 2:50PM ह्या वेळेस मिळेल

द्वय्यम निबंधक
हवेली 4 (कोथरुड)

बाजार मुल्य: 0 रु.

मोबदला: 0 रु.

भरलेले मुद्रांक शुल्क: 100 रु.



दुय्यम निबंधक: हवेली 4 (कोथरुड)

दस्तक्रमांक व वर्ष: 9009/2009

नोंदणी 63 म.

Friday, December 11, 2009

सूची क्र. दोन INDEX NO. II

Regn. 63 m.e.

2:36:25 PM

गावाचे नाव : पाषाण

- (1) विलेखाचा प्रकार, मोबदल्याचे स्वरूप घोषणा पत्र व बाजारभाव (भाडेपट्ट्याच्या बाबतीत पट्टाकार आकारणी देतो की पट्टेदार ते नमूद करावे) मोबदला रु. 0.00 वा.भा. रु. 0.00
- (2) भू-मापन, पोटहिस्सा व घरक्रमांक (असल्यास) (1)(1) वर्णन: गाव सोजे पाषाण येथील सं नं 136/2 पार्ट या मिळकतीवरील मॅनोलिया अपार्टमेंट मधील इमारत क्र अे बी सी आणि डी मधील फ्लॅट मोकळी जागा सामाईक क्षेत्र इत्यादी सह
- (3) क्षेत्रफळ (1)
- (4) आकारणी किंवा जुडी देण्यात असेल तेव्हा (1)
- (5) दस्तऐवज करून देण्या-या पक्षकाराचे व संपूर्ण पत्ता नाव किंवा दिवाणी न्यायालयाचा हुकुमनामा किंवा आदेश असल्यास, प्रतिवादीचे नाव व संपूर्ण पत्ता (1) - - - घर/प्लॉट नं: -; गल्ली/रस्ता: -; इमारतीचे नाव: -; इमारत नं: -; पेठ/वसाहत: -; शहर/गाव: -; तालिका: -; पिन: -; पत्रांक: -;
- (6) दस्तऐवज करून घेण्या-या पक्षकाराचे नाव व संपूर्ण पत्ता किंवा दिवाणी न्यायालयाचा हुकुमनामा किंवा आदेश असल्यास, वादीचे नाव व संपूर्ण पत्ता (1) पोस्ट किरीट जयध्वज अच्य 24 तर्फे करून घेतले. परांजपे रिकम्स (कन्स्ट्रक्शन) लि. तर्फे डावरेवट ए.एस. पी. परांजपे तर्फे वि. क्र. मू. श्री. श्री. रघुनाथ पानसे - -; घर/प्लॉट नं: 19 सुरम्य लोकमान्य कॉलनी कोथरुड पुणे गल्ली/रस्ता -; इमारतीचे नाव: -; इमारत नं: -; पेठ/वसाहत: -; शहर/गाव: -; तालिका: -; पिन: -; पत्रांक: -;
- (7) दिनांक करून दिल्याची 11/12/2009
- (8) नोंदणीचा 11/12/2009
- (9) अनुक्रमांक, खंड व पृष्ठ 9009/2009
- (10) बाजारभावाप्रमाणे मुद्रांक शुल्क रु 20.00
- (11) बाजारभावाप्रमाणे नोंदणी रु 100.00
- (12) शेरा

मी गदकल केली,
मी वाचली,
मी रुजवात घेतली

दस्तासोबतची नक्कल
अर्जदार श्री. ...
यांना दिली. दिनांक ...

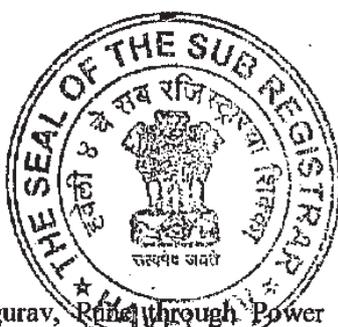
सह. दुय्यम निबंधक (वर्गीकृत) हवेली क्र. 4 पुणे





हयल - ४		
०००२	२	८९
२००९		

- 1)(a) Mr. Popat Kisan Jadhav, Age 54 years, Occupation Agriculturist, Residing at Someshwarwadi, Pashan, Pune - 411 008 (b) Mr. Ganesh Popat Jadhav, Age 25 years, Occupation Agriculturist, Residing at Someshwarwadi, Pashan, Pune - 411 008 (c) Mrs. Jyoti Ankush Kapse alias Ms. Jyoti Popat Jadhav Age 30 years, Occupation Housewife, Residing at Pimprigaon, Pune, (d) Mrs. Pramila Suresh Shinde alias Ms. Pramila Popat Jadhav Age 28 years, Occupation Housewife, Residing at Akurdi, Pune (e) Mrs. Hemali Ganesh Kapse, alias Ms. Hemali Popat Jadhav Age 26 years, Occupation Housewife, Residing at Pimprigaon, Pune (2)(a) Mr. Jagannath Kisan Jadhav Age 58 years, Occupation Service/Agriculturist, Residing at Someshwarwadi, Pashan, Pune (b) Mr. Pandurang Jagannath Jadhav Age 20 years, Occupation - Education, Residing at Someshwarwadi, Pashan, Pune (c) Mrs. Savita Bhanudas Kakade alias Ms. Savita Jagannath Jadhav, Age 35 years, Occupation Housewife, Residing at Pimprigaon, Pune (d) Mrs. Manisha Khandu Mandekar alias Ms. Manisha Jagannath Jadhav Age 30 years, Occupation Housewife, Residing at Banergaon, Pune (e) Mrs. Manjusha Balasaheb Gaikwad alias Ms. Manjusha Jagannath Jadhav, Age 25 years, Occupation Housewife, Residing at Aundhgaon, Pune (f) Mrs. Rekha Dinesh Lande alias Ms. Rekha Jagannath Jadhav, Age 22 years, Occupation Housewife, Residing at Kasarwadi, Pune (3) (a) Mr. Arun Kisan Jadhav Age 52 years, Occupation Service Residing at Kasarwadi, Pune (b) Mr. Vikram Arun Jadhav, Age 27 years, Occupation Business, Residing at Kasarwadi, Pune, (c) Ms. Sarika Arun Jadhav Age 22 years, Occupation Housewife Residing at Kasarwadi, Pune (4) Mrs. Anjana Gopal Kakade Age 62 years, Occupation Housewife, Residing at Kasarwadi, Pune, (5) Smt. Indubai Kashinath Bhoir Age 60 years, Occupation Housewife, Residing at Chinchwadgaon, Pune, (6) Mrs. Baidabai Vasant Jore, Age 50 years, Occupation Housewife Residing at Chinchwadgaon, Pune. (7) Mrs. Baby Narayan Dighe, Age 48 years, Occupation Housewife Residing at Thergaon, Pune (8) Smt. Shantabai Baban Dighe, Age 75 years, Occupation Housewife Residing at Thergaon, Pune (9) Smt. Bhagubai Baban Jadhav Age 70 years, Occupation Housewife, Residing at Thergaon, Pune, (10) Mr. Dhanaji Baban Jadhav, Age 41 years, Occupation Service, Residing at Thergaon, Pune, (11) Smt. Mainabai Baban Ranpise, Age 54 years, Occupation Service, Residing Sutarwadi, Pashan, Pune, (12) Smt. Vandana Laxman Jadhav Age 27 years, Occupation Housewife, Residing at Sutarwadi, Pashan, Pune, (13) Smt. Kamlabai Mahadu Sakhare, Age 75 years, Occupation Housewife, Residing at Hinjewadi, Pune (14) Smt. Barkabai Rajaram Dighe Age 73 years, Occupation Housewife, Residing at Bhiwandi, Saswad, Pune (15) Smt. Sakhubai Namdeo Shinde Age 55 years, Occupation Residing at Pimplegurav, Pune (16) Smt. Bhimabai Govind Jadhav Age 62 years, Occupation - Housewife Residing at Pimplegurav, Pune (17) Mr. Raju Govind Jadhav Age 32 years, Occupation Agriculturist Residing at Pimplegurav, Pune, (18) Mr. Hiranman Govind Jadhav Age 30 years, Occupation Agriculturist Residing at Pimplegurav, Pune, (19) Mr. Taraman Govind Jadhav, Age 28 years, Occupation Agriculturist Residing at Pimplegurav, Pune, (20) Mrs. Muktabai Maruti Bhosale, Age 45 years, Occupation Housewife, Residing at Katraj, Pune (21) Mrs. Janabai Pandit Tapkir Age 43 years, Occupation - Housewife, Residing at Charohili, Pune, (22) Mrs. Sanjivani Tukaram Dighe, Age 38 years, Occupation - Housewife Residing at Bhiwandi, Saswad, Pune, (23) Mrs. Vrindawani Balasaheb Sakhare, Age 41 years, Occupation Housewife, Residing Hinjewadi, Pune, (24) Mrs. Shalan Bhagwan Kapse, Age 35 years, Occupation Housewife, Residing at Pimprigaon, Pune (25) Mrs. Malan Balu Kadam, Age 28 years, Occupation Housewife,



हवली - ४		
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Residing at Pimplegurav, Pune through Power of Attorney Holder Mr. S.P. Paranjape, Age : 52 years, Occupation : Business, Residing at Pune, Director of M/s. Paranjape Schemes (Construction) Ltd., PSC House, C.T.S. No. 111+111/2 Anand Colony, Erandwane, Pune- 411 004.

Hereinafter referred to as the "OWNER / GRANTOR NO.1" (which expression unless it be repugnant to the context or meaning thereof shall mean and include his/her/their heirs, successors-in-title)

AND

M/s. PARANJAPE SCHEMES (CONSTRUCTION) LTD. a company registered and incorporated under Companies Act, 1956, having administrative office at PSC House, C.T.S. No. 111+111/2 Anand Colony, Erandwane, Pune- 411 004, through one of its present Directors SHRI. S. P. PARANJAPE, Age 52 years, Occupation: Business, residing at Pune.

Hereinafter referred to as 'DEVELOPER/GRANTOR NO.2' (which expression unless it be repugnant to the context or meaning thereof shall mean and include its successors-in-title) do hereby declare and state as follows:-

ONE

THAT Grantor No.1 and 2 are fully qualified and empowered to execute this Deed of Declaration.

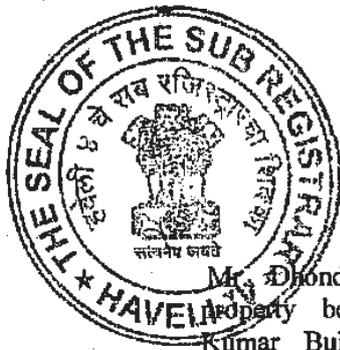
TWO

THAT the larger property is ancestral property and it is owned, seized and possessed by the Owner/Grantor No.1 jointly. The Owner/Grantor No.1 herein are well and sufficiently entitled to all the rights, title, share and interests in the larger property;

**SCHEDULE -I ABOVE REFERRED TO
(LARGER PROPERTY)**

ALL THAT the piece or parcel of land and ground bearing S. No. 136/2 of Village Pashan, District Pune. (Xerox copy of 7/12 extract is annexed and marked as ANNEXURE-1) within limits of the Pune Municipal Corporation and within the Registration District and Sub-District of Pune, admeasuring 17400 sq. mtrs. and bounded as follows, i.e. to say :

- | | |
|-------------------------|--|
| On or towards the North | :- by Property of Mr. Girish Vyas and part of S.No.136 owned by Jalinder Jadhav |
| On or towards the East | :- by Property bearing S.No.136 owned by Mr. Dhondiba Jadhav and others and Mr. Vithoba Jadhav and others. |
| On or towards the West | :- by Property bearing S.No.136 owned by |



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Mr. Dhondiba Jadhav and others and property bearing S.No.132 owned by Kumar Builders and property bearing S.No.136 owned by Mr. Jalinder Jadhav

On or towards the South :- by Property bearing S.No.136 and 137 owned by Mr. Dhondiba Jadhav and others.

SCHEDULE -II ABOVE REFERRED TO

(Subject Matter Of Declaration)

ALL THAT net area of the plot of land admeasuring 12799.29 Sq.Mtrs. as per sanctioned plan (arrived after deduction for (i) land under the road 2789.678 Sq.Mtrs. (ii) 10% Open space admeasuring 1461.032 Sq.Mtrs. (iii) Transformer 350 Sq.Mtrs. from total area of the plot admeasuring 17,400.00 Sq.Mtrs.) bearing S. No. 136/2 of Village Pashan, District Pune within limits of the Pune Municipal Corporation and within the Registration District and Sub-District of Pune and bounded as follows, i.e. to say :

On or towards the North :- by S. No. 2150
 On or towards the East :- by S. No.2137 & 2100
 On or towards the West :- by Part of S. No.136/2 & D.P. Road,
 On or towards the South :- by S. No.137

Out of the net plot area admeasuring 12799.29 Sq.Mtrs. the piece and parcel of the land admeasuring 1578.519 Sq.Mtrs. is reserved for construction of proposed E wing /building and hence the balance area of the land admeasuring 11220.771 Sq.Mtrs. (hereinafter referred to as the said land) remained after deduction of 1578.519 Sq.Mtrs. from net plot area admeasuring 12799.29 Sq.Mtrs., the building/s A, B, C, D and other edifices being constructed thereon with total FSI admeasuring 21002.283 Sq.Mtrs. as per item No.16 of area statement of the sanctioned plan against permissible FSI admeasuring 21003.266 Sq.Mtrs. (as per item No.10 of area statement of the sanctioned plan) (which includes net plot FSI admeasuring 12799.29 Sq.Mtrs. + land under D.P. road 2789.678 Sq.Mtrs. + Transformer 350 Sq.Mtrs. + .4 TDR admeasuring 5064.298 Sq.Mtrs. (2362.698 + 290.60 + 1100+ 736+ 575 Sq.Mtrs.) for construction as per area statement given in the sanctioned plan and architect certificate annexed and marked as ANNEXURE-2 together with all rights, liabilities, heriditaments and



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appurtenance thereto collectively referred to as "MAGNOLIA APARTMENTS". Xerox copy of the sanctioned plan is enclosed and it is part and parcel of this declaration.

THREE

THAT the Owner/Grantor No.1 and the Developer/Grantor No.2 herein executed Agreement for Development on 15/12/2005 with Owner/Grantor No.1 for undivided rights, title, share and interest of the Owner/Grantor No.1 in the said larger property. The said Agreement is registered with the Sub-Registrar, Haveli No.19, Pune vide Sr.No. 4671 dated 15/12/2005 (hereinafter referred as "DEVELOPMENT AGREEMENT") and under the said Development Agreement/s the Owner/Grantor No.1 conferred and entrusted in favor of the Developer/Grantor No.2 alone the rights of development of the larger property by demolishing existing structure if any and constructing thereupon one or more building/s and selling Flats/Apartments of building/s proposed to be constructed by the Developer/Grantor No.2 there at. The Owner/Grantor No.1 executed Power of Attorney/ies in favor of Shri Shrikant Purushottam Paranjape / Shri Shashank Purushottam Paranjape Directors and Shri. Subodh G. Apte, Accounts Manager of M/s Paranjape Schemes (Construction) Ltd. and registered the same with the Sub-Registrar Haveli No.19, Pune vide Sr. No. 4672 dated 15/12/2005. By virtue of the said Development Agreement/s and the Power of Attorney/ies, Developer/Grantor No.2 alone has all rights such as to demolish existing structure, if any, standing on the said property and to do the construction of ownership flat / apartment / row house / bungalow / shop / office, sell the same in open market, execute agreement to sell, register the same in the property registration office, accept consideration, pass valid receipts, form apartment / society of flat/apartment purchasers etc.;

FOUR

THAT the Developer/Grantor No.2 decided to develop part of the land which is subject matter of this Deed and is hereinafter referred to as the "SAID PROPERTY" (subject matter of development) more particularly described in the SCHEDULE-II above written and forming part of the larger Property.



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FIVE

THAT the Owner/Grantor No.1 submitted return U/s. 6(1) of Urban Land (Ceiling and Regulation) Act, 1976 wherein Dy. Collector Competent Authority, Pune Agglomeration was pleased to pass an order wherein Competent Authority declared the property as a non-vacant property. Further Pune Municipal Corporation started allowing construction upon the lands which area earmarked for Brick Kline reservation by accepting premium and accordingly on payment of premium to Pune Municipal Corporation the said property became vacant land hence Owner/Grantor No.1 again submitted return 6(1) read with Sec. 15 wherein Additional Collector, Competent Authority pleased to pass an order and declared the Owner/Grantor No.1 as non surplus holder.

SIX

THAT after sanctioning the layout from Pune Municipal Corporation, the Developer/Grantor No.2 applied U/s 44 of Maharashtra Land Revenue Code to Additional Collector and obtained N. A. Order,

SEVEN

THAT the Developer/Grantor No.2 herein got the layout sanctioned and also got the building plans sanctioned and obtained Commencement Certificate No. CC/1325/2006 dated 12/07/2006 by Pune Municipal Corporation for construction of building/s on the said property.

EIGHT

THAT, the Developer/Grantor No.2 is developing the piece and parcel of the land hereinafter referred to as the said land more particularly described in Schedule -II above i.e. subject matter of development and this Deed of Declaration by utilizing FSI /TDR as per sanctioned plan/Architect's Certificate for construction of the building/s A, B, C and D of flats/apartments hereinafter referred to as "flats/apartments units" and other edifices on the said land as per the rules and regulations.

NINE

THAT, in the course of construction, Developer/Grantor No.2 on the basis of the said Development Agreement and the Power of Attorney executed Agreements to Sell with intending Purchasers of flats/apartment units, registered the same with the Sub-Registrar, Haveli, Pune.



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TEN

THAT, the Flats/Apartment units shown in the sanctioned plan of MAGNOLIA APARTMENTS are described in the Statement annexed hereto and marked as ANNEXURE -3. The terraces, gardens etc. referred in the said statement or the terraces, gardens etc. appurtenant to the individual Flats/apartment units are reserved for exclusive use of the Purchaser/s of respective Flats/apartment units. The Purchaser/s or owner/s of the respective Flats/apartment units have exclusive right to use , enjoy and dispose off the said terrace/s , gardens etc. in exclusion of other apartment purchasers.

ELEVEN

1) COMMON AREAS AND FACILITIES TO THE MAGNOLIA APARTMENTS

a) Two entrance gates, podium, paving block area, Civic amenities like water, drainage and electrical lines, Compound wall, underground water tank, five water pumps, overhead water tanks, common toilets, two lifts and two lift ducts, two lift machine for each building, staircases, Common lights, Fire fighting system, electricity meter rooms, wormi culture unit, Entrance lobby and corridor, D.G. set with connection to lifts, parking lots, common lights, pumps, overhead terrace, flats, fabricated staircases at overhead terrace, club house, multi purpose hall , lightening arrest system, two security cabins , open space , garden ; children play area , two well, bore , scooter parking area , drive way, refuge flats, two gas banks with meters , L.T. Room , STP Plant, intercom system, R.F. security system, etc.

The said common amenities and facilities like entrance gate/s, Civic amenities like water, drainage and electrical lines, Compound wall, underground water tank, water pumps, overhead water tanks, common toilets, lifts and lift ducts, lift machine, Fire fighting system, electricity meter rooms, wormi culture unit, D.G. set, parking lots, pumps, overhead terrace, fabricated staircases at overhead terrace, club house, multi purpose hall , lightening arrest system, children play area , two boars , drive way, refuge flats, gas banks with meters , L.T. Room , STP Plant etc. need frequent repairs and maintenance. It is duty and responsibility of the office bearers /committee members of the apartment elected from time to time to maintain the aforesaid common amenities and facilities and ensure that no



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untoward incidence such as accident/loss of life, damage to the property takes place at the site during the tenure. The responsibility of such happenings shall be on the office bearers /elected committee members. Unfortunately if such incidence occurs Developer/Grantor No. 2 will not be responsible for the cost and consequences. The Developer /Grantor No.2 has obtained NOCs, licenses and certificates by various authorities for various amenities like fire fighting, lift etc. provided in the said building and the said NOCs /licenses are valid and subsisting. The office bearers /elected committee members shall be responsible for renewal of the said No Object Certificates, Licenses, certificates timely, repairs and maintenance of all common amenities and facilities provided in the scheme and to take all possible safety measures to avoid occurrence of any untoward incidence in the complex.

b) CLUB HOUSE

A club house has been provided in the complex and the Owners/occupiers of all flats/Apartments in the scheme and their family members staying with them, shall *ipso facto* be the members of the said Club House and shall be entitled to avail the facilities available thereat. However each and every flat/Apartment purchaser or member from his family shall have to contribute club house fees as per rules and regulations. The Developer/Grantor No.2 has reserved the right to grant membership of the club house to Flat/Apartment Purchasers of proposed E building to be constructed on the balance land. It is further clarified that, the membership even of durations larger than annual membership like life membership given by the Developer/Grantor No.2 shall be valid and will be binding on the body controlling the management of the club house.

An elected committee members of the apartment shall decide the matters relating to the maintenance and upkeep of club house and common facilities made available to all flat/apartment purchasers. The management of the Club House and the common facilities made available to all flat/apartment purchasers shall be with elected committee. The decisions including admissions and other rules and regulations including fees to be charged to the owners/occupiers of Flats/Apartments shall be finalised by the elected committee governing management. The decisions of the elected committee shall always be binding on



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all flat/apartment purchasers. The rules and regulations framed for usage of such facilities shall be same and identical to all flat/apartment purchasers.

2) **RESTRICTED AREAS/LIMITED COMMON AREAS**

a) **TERRACE /GARDENS**

Terraces/Gardens shown against the units in the above mentioned statement or those appurtenant to the individual apartment units are reserved for exclusive use of the respective flat/apartment purchasers and to the exclusion of other flat/apartment purchasers.

b) **PARKING PLACES**

Parking areas specifically reserved for parking of vehicles of the purchasers of the flats in MAGNOLIA Apartments have been mentioned in the annexed statement marked as ANNEXURE-3 and shown in the parking plan annexed as ANNEXURE-4 hereto. All parking areas shall be for exclusive use and enjoyment of the respective owners thereof and to the exclusion of other apartment unit purchasers without any other person/s being entitled to object to the same in any manner. All parking areas which are not so specifically reserved/allotted belong to Developer/Grantor No.2 till unsold flats/apartments are sold. The Developer/Grantor No.2 has right and authority to reserve/allot those parking areas and grant permission to use them to any flat purchaser to the exclusion of others. The unreserved parking areas shown in the annexed parking plans belong to Developer/Grantor No.2 and Developer/Grantor No.2 has right to grant permission to use those parking areas to any persons/s of its choice. The disputes however regarding encroachment and/or wrongful use of the parking areas reserved for exclusive use, by any other person/s, shall be handled /solved by the Owner/s of the respective car parking within frame work of Law without holding the Developer/Grantors No.2 responsible in this behalf in any manner whatsoever.



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TWELVE

THAT the Developer/Grantor No.2 has reserved the rights i.e. to utilize 20% TDR admeasuring 2616.259 Sq.Mtrs. and balance TDR to develop the piece and parcel of the land admeasuring 1578.519 Sq.Mtrs. out of net plot area 12799.29 Sq.Mtrs. for construction of proposed building E of Flats/Apartments and has reserved all rights incidental thereto i.e. the right to submit the building plan and get the same sanctioned by Pune Municipal Corporation, to construct Flats/Apartments/shops/offices thereat, to utilize the amenities like entrance gate, drainage, roads, water, D.G. set, water tanks, open spaces, bore wells, pumps, etc., of MAGNOLIA APARTMENTS for proposed construction by paying necessary charges to concerned authorities, to sell the flats/apartments/shops/offices so constructed thereat in open market, execute Agreements to Sale, register the same in the proper registration office/s, accept consideration, pass valid receipts, form separate Condominium of the owners/allottees of such Flats/Apartments/shops/offices etc., to submit the land and the proposed building to be constructed thereat to the provisions of the Maharashtra Apartment Ownership Act, 1970 by filing separate Deed of Declaration and complete the entire scheme in all respect or modify this Deed of Declaration to submit the proposed E building to the provisions of the Maharashtra Apartment Ownership Act, 1970. The income derived by sale of proposed Flats/Apartments/Shops/Offices of proposed E building to be constructed thereat shall be sole income of Developer/Grantor No.2 alone and Magnolia Apartments and its members shall have no claim over such income. Whether to construct residential or commercial building shall be the sole discretion of the Developer/Grantor No.2. The flat/apartment purchasers of the proposed building shall have right to enjoy the facility/ies i.e. open space , club house, civic amenities, common areas and facilities of Magnolia Apartments subject to payment of necessary charges and by observing rules and regulations that may be framed from time to time. The Developer/Grantor No.2 has explained the aforesaid facts to the members of the apartment from time to time and the members have accepted the same and agreed not to complain for the same. All flat purchasers agreed that unconstructed area of the land forming part of the larger property shall always belong to Developer/Grantor No.2 and all flat purchasers tendered irrevocable blanket consent for the aforesaid rights reserved by Developer/Grantor No.2.



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THIRTEEN

THAT it is hereby declared that the flat/apartment purchasers of A, B, C and D building of Magnolia Apartments shall have unconditional and unobstructed right to pass, re-pass through the property of proposed E building for 36 mtrs. wide D.P. Road . It is hereby further declared that the flat/apartment purchasers of proposed E building shall have unconditional and unobstructed right to pass, re-pass through the property of Magnolia Apartments for 12 mtrs. wide D.P. Road . The Developer/Grantor No.2 has explained the aforesaid facts to the members of the apartment from time to time and the members have accepted the same and agreed not to complain for the same

FOURTEEN

THAT, a plan of Apartment ownership is hereby constituted and is subject to the provisions of the Maharashtra Apartment Ownership Act, 1970 so that each family unit may be conveyed and registered as individual property capable of independent use on account of each having its own exit to common areas and facilities of the condominium each family unit owner having an exclusive and particular right, title and interest in the common areas and facilities as shown above.

FIFTEEN

THAT, for the purpose of stamp duty and registration fees on Declaration and Deed of Apartment under Section 13(5) the value of MAGNOLIA APARTMENTS is distributed as follows:

Parcel of land property in Schedule -II of para two above is valued at Rs.13,88,21,001/- (Rs. Thirteen Crore Eighty Eight Lakhs Twenty One thousand and One only)

Building /s described above is/are valued at Rs.75,26,63,429/- (Rs. Seventy Five Crore Twenty Six Lakhs Sixty Three Thousand Four Hundred and Twenty Nine only)

Postal address of the building is as under:-
MAGNOLIA APARTMENTS
S. No. 136/2 (part) , Pashan ,
Pune



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SIXTEEN

THAT, the general and/or restricted areas/limited common areas and facilities shall remain undivided and no owner shall bring any action for partition or division thereof.

SEVENTEEN

THAT, the percentage of the undivided interest in the general and the restricted areas/ limited common areas and facilities established herein as shown in above paras shall not be changed except by unanimous consent of all apartment owners expressed in amendment to this deed duly registered.

EIGHTEEN

THAT, the undivided interest in the general and the restricted areas/limited common areas and facilities shall not be separated from the family unit to which it pertains and shall be deemed conveyed and encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instruments.

NINETEEN

THAT, each apartment owner shall comply with the provisions of this Deed, the Bye-laws, decisions and resolutions of the Association of Apartment Owners, hereinafter referred to as "Association" or its representatives as hereinabove recorded and the failure to comply with any such provisions, decision or resolutions, shall be ground for an action to recover sums due, for damages, or for injunctive relief.

TWENTY

THAT, the dedication of the property to the plan of apartment ownership herein shall not be revoked, or the property removed from the plan of Apartment Ownership, or any of the provisions herein amended unless all the apartment owners and the mortgagees of all the mortgages covering the units unanimously agree to such revocation or amendment or removal of the property from the plan by duly registered instrument.



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TWENTY ONE

THAT, no apartment owner of a family unit may exempt himself/herself from liability for his/her contribution towards the common expenses by waiver of the use or enjoyment of any of the general and/or restricted areas/limited common areas and facilities or by the abandonment or his/her family unit.

TWENTY TWO

THAT, all sums assessed by the Association as is herein mentioned but unpaid for the share of the common expenses chargeable to any family unit shall constitute a charge on such family unit prior to all other charges except only (i) charge, if any, on the family unit for payment of Government or Municipal Taxes or both and (ii) all sums unpaid on a first mortgage of the apartment.

TWENTY THREE

THAT, all present or future owners, tenants or any other persons that might use the facilities of the buildings in any manner, are subject to the provisions of this Deed and that mere acquisition or rental of any of the family units of the buildings or the mere act of occupancy of the said units shall signify that the provisions of this Deed are accepted and ratified. The respective family units shall not be rented or given on leave & licence or care taker basis by the apartment owners thereof for transient or hotel purpose, which shall be defined as (a) rental compensation or compensations for any period less than thirty days, or (b) any rental or if the occupants of the family units are provided customary hotel or boarding or lodging or paying guest services other than the forgoing obligations, the said apartment owners of the respective family units shall have the absolute right to lease such unit or give it on leave and license or care taker basis provided that the said lease or leave and license or care taker basis is made subject to the covenants and restrictions contained in this Declaration and further subject to the byelaws in "Exhibit -B" attached hereto.

TWENTY FOUR

THAT, if the property, subject to the plan of apartment ownership is totally or substantially damaged or destroyed the repair, reconstruction or disposition of the property shall be done as provided by the Maharashtra Apartment Ownership Act, 1970.



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TWENTY FIVE

THAT , where a family unit is sold by a mortgage in exercise of his/her powers of sale under the mortgage or by a court in execution of a decree in a suit brought by a mortgagee against the owner of such family units, then neither the mortgagee nor the purchaser who derives title to the family unit at such sale, or his successors or assigns shall be liable for assessments by the association which became due prior to the acquisition of title by such acquirer, it being understood , however, that the above shall not be construed to prevent the Association of Apartment Owners from filing and claiming charge for such assessments and enforcing the same as provided by law and that such charge shall be subordinate to such mortgage.

TWENTY SIX

THAT, in a voluntary conveyance of family unit the Grantee of the unit shall be jointly and severally liable with the Grantors for all unpaid assessments by the Association of Apartment Owners against the later for his/her share of the common expenses up to time of grant or conveyance without prejudice to the grantee's right to recover from the Grantor the amount paid by the Grantee. However, any such Grantee shall be entitled to a statement from the Manager or Board of Mangers of the Association as the case may be , setting forth the amount of the unpaid assessments against the Grantor due to the Association and such Grantee shall not be liable for, nor shall be family unit conveyed subject to a charge for any unpaid assessment made by the said Association of Apartment Owners against the Grantors in excess of the amount therein set-forth.

TWENTY SEVEN

THAT, the Manager or Board of Managers of the Association shall obtain and continue in effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgage covering family units but without prejudicial to the right of the owners of a family unit to obtain individual family unit's insurance.

TWENTY EIGHT

THAT, insurance premium for any blanket insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association of



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Apartment Owners and that such payment shall be held in a separate account of the Association and used solely for the payment of the blanket property insurance premium as such premium become due.

TWENTY NINE

THAT the Owner/Grantor No.1 and Developer/Grantor No.2 has reserved the right to file Supplementary Deed of Declaration /Deed of Amendment to this Deed and register the same in the office of the Sub-Registrar Haveli , Pune to bring on record error or omission if any remained in this deed due to oversight or to submit balance land and proposed E building to the provisions of Maharashtra Apartment Ownership Act, 1970. Such Supplementary Deed of Declaration/Deed of Amendment shall be part and parcel of this Deed and all the deeds shall be read and construed simultaneously and not in isolation. The contents of the said Deeds shall be binding on all flat purchasers of the apartment. The Flat/Apartment Purchasers tendered irrevocable blanket consent for the aforesaid rights in the First General Body meeting of the apartment.

The Owner/Grantor No.1 and Developer/Grantor No.2 has reserved the right to do the proposed construction as stated hereinbefore and form separate condominium of the owners/allottees of the flats/apartments /shops/offices of the proposed building. The Flat/Apartment Purchasers of Magnolia Apartments building A, B, C, D have tendered irrevocable blanket consent for the aforesaid rights in the First General Body meeting of the apartment.

IN WITNESS WHEREOF THE PARTIES TO THIS DEED HAVE SUBSCRIBED THEIR HANDS ON THE DAY AND THE YEAR HEREINBEFORE WRITTEN

SIGNED AND DELIVERED by Within named the Owner /Grantor No.1 through their common power of attorney holder Mr. S.P. Paranjape Director of M/s. Paranjape Schemes (Construction) Ltd.

Witness:

SIGNED AND DELIVERED by within named Developer/Grantor No.2 M/s Paranjape Schemes (Construction) Ltd. through its Director Shri. S. P. Paranjape

Witness:

Sahakar nagar
Pune 411009.

A. ...



पुणे महानगरपालिका

शिवाजीनगर, पुणे ४११००५.

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बांधकाम नियंत्रण कार्यालय

क्रमांक: १०/१२/२००९

दिनांक: १०/१२/२००९

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[मुंबई प्रांतिक महानगरपालिका अधिनियम, १९४९ कलम २६३ (१) अन्वये]

भोगवटा पत्र (कळब हाऊस व स्विमिंग पूल)

शी. / श्रीमती एस. सी. परांजपे व/० श्री. अ. बी. वैद्य (क. अर्जि)

राहणार १२०६ बी/७ दत्तप्रसाद अपार्टमेंट जे. एम. रोड शि. नगर पुणे

यांस -

आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलमे २५३ / २५४ व एम्. आर. टी. पी. अॅक्ट कलमे ४५/६९ प्रमाणे पुणे, पेठ पाषाण घरांक - फायनल प्लॉट क्र. /

सर्व्हे क्र. १२६/२ - टी. पी. स्कीम नंबर - यांत नवीन CC/३१०६/०७ - दि. १०/१२/२००९ इकडील संमती पत्र / कमेन्समेंट सर्टिफिकेट क्रमांक - दिनांक ११/८/२००९

अन्वये बांधकाम करण्यास परवानगी देण्यात आली आहे. सदरील संमती पत्र / कमेन्समेंट सर्टिफिकेटप्रमाणे सर्व / कळब भागाचे काम पुरे झाल्याबद्दल व सदर नवीन बांधलेल्या इमारतीची जागा उपयोगात आणावयास संमती मिळण्याबाबत दिनांक १०/१२/२००९ रोजी अर्ज केल्यावरून आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलम २६३ (१) प्रमाणे कळविण्यात येते की, खालील नमूद केलेल्या अटींवर पुढील वर्णनाचा इमारतीचा भाग उपयोगात आणण्यास संमती देण्यात येत आहे.

उपयोगात आणावयाच्या बांधकामाचे वर्णन

मेजूर नकाशा प्रमाणे कळब हाऊस व स्विमिंग पूल सह संपूर्ण इमारतीचे बांधकाम करत

- (१)
- (२)
- (३)

अट- भविष्यात मान्य नकाशाव्यतिरिक्त भाषातीही बांधकामे (उदा. सर्व्हे मॉडर्नल अंतरात व टेरसवरील शेड, पार्टिशन, डॉल करून अगर ग्रील लावून पार्किंग वॉदिरल कस्णे इ.) करू नये, कोणतीही पूर्व सूचना न देता सदरची संपूर्ण अनधिकृत बांधकामे पाडण्यात येतील व त्याप्रित्यर्थ येणारा संपूर्ण खर्च फ्लॅटधारक/मालक बांधकाम वसूल करण्यात येईल.

12.12.09

सहायक अभियंता, बांधकाम नियंत्रण क्र. पुणे महानगरपालिका.

17.12.09

T.C.

Signature

Ax-G

F. No. J-11013/77/2004- IA II (I)
Government of India
Ministry of Environment and Forests
(I.A. Division)

Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi – 110 003

Dated 18th March, 2010

OFFICE MEMORANDUM

With reference to Ministry's O.M. of even number dated 4th December, 2009 available on Ministry's website <http://www.envfor@nic.in>, all the Project Proponents to whom Ministry of Environment and Forests has awarded 'Terms of References' under the EIA Notification, 2006 are hereby informed that final EIA/EMP will be entertained in the Ministry for consideration for the Environment Clearance, only if prepared by Consultants/s accredited by the National Accreditation Board of Education and Training/Quality Council of India (NABET/QCI). **No final EIA/EMP from any Project Proponent prepared by the Non-accredited Consultant will be entertained after 1st July, 2010.**

2. Therefore, all the individuals, firms and organizations, including Government Organizations, Universities and Public Sector Undertakings (PSUs) working in the area of Environmental Impact Assessment should apply and register under the scheme of Accreditation and Registration of the NABET/QCI well in time.

3. This is also to inform that:

- i) A Consultant would be confined in the consultancy only to the accredited sectors and parameters for bringing in more specificity in the EIA document.
- ii) Detailed procedure for registration of Consultants for taking up the assignments in Category 'A' and 'B' projects as detailed in EIA Notification, 2006 is available at the website of NABET/QCI (www.cqin.org). The QCI would maintain full transparency on accredited Consultants, procedure followed for accreditation, feed back and evaluation mechanism for Consultants for quality of EIA/EMP Reports.
- iii) After accreditation, the Consultants would need to include a Certificate in this regard in the EIA/EMP Reports prepared by them and also data provided by other Organizations/Laboratories including their status of approvals, etc.

T.C.



iv) The EIA Consultants can approach NABET/QCI for further clarification on the subject through the website of NABET/QCI (www.qcin.org).

This issues with the approval of the Competent Authority.

(Dr. P.B. Rastogi)
Director

1. All the Officers of IA Division
2. Chairman/Secretaries of SEIAA/SEACs
3. Website of MoEF
4. Guard File

T.C.





भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

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अधिसूचना

नई दिल्ली, 4 अप्रैल, 2011

का.आ. 695(अ).—केन्द्रीय सरकार ने, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा (3) की उपधारा (1) और उपधारा (2) के खंड (v) के अधीन जारी की गई भारत सरकार के पर्यावरण और वन मंत्रालय की अधिसूचना संख्यांक का0आ0 1533(अ), तारीख 14 सितंबर, 2006, द्वारा निदेश दिया था कि उसके प्रकाशन की तारीख से ही, नई परियोजनाओं या क्रियाकलापों का अपेक्षित संनिर्माण या उक्त अधिसूचना की अनुसूची में सूचीबद्ध विद्यमान परियोजनाओं या क्रियाकलापों का विस्तार या आधुनिकीकरण, प्रक्रिया और या प्रौद्योगिकी में परिवर्तन सहित क्षमता में परिवर्धन करते हुए भारत के किसी भाग में, यथास्थिति, केन्द्रीय सरकार से या केन्द्रीय सरकार द्वारा इसमें विनिर्दिष्ट प्रक्रिया के अनुसार उक्त अधिनियम की धारा 3 की उपधारा (3) के अधीन गठित राज्य स्तर पर्यावरण समाघात निर्धारण प्राधिकरण द्वारा केवल पूर्व पर्यावरण अनापत्ति के पश्चात् ही किया जाएगा;

और, उक्त अधिसूचना में प्रयुक्त “निर्मित क्षेत्र” पद के संबंध में स्पष्टीकरण का उपबंध करने और अधिसूचना के भिन्न-भिन्न पैराओं को पारस्परिक रूप से संगत बनाने के लिए भी तथा ऐसे अनाशयित परिवर्तनों को प्रत्यावर्तित करने के लिए जो राजमार्ग परियोजना से संबंधित पर्यावरणीय समाघात निर्धारण अधिसूचना, 2006 की अनुसूची में विशेषकर मद्र संख्या 7(च) के सामने प्रविष्टि में का.आ. 3087(अ), तारीख 1 दिसंबर, 2009 द्वारा संशोधन करते समय अधिसूचना में किए गए थे और उक्त अधिसूचना में उपयुक्त संशोधन करने के इस प्रयोजन के लिए विनिश्चय किया गया है।

और उक्त पर्यावरण (संरक्षण) नियमों का नियम 5 का उपनियम (3) का खंड (क) यह उपबंधित करता है कि जब कभी केन्द्रीय सरकार यह विचार करती है कि किसी उद्योग पर या

किसी क्षेत्र में किन्हीं प्रक्रियाओं या प्रचालन को चलाने पर, प्रतिषेध या निर्बंधन अधिरोपित करना चाहिए तो वह ऐसा करने के लिए अपने आशय की सूचना देगी;

और उक्त पर्यावरण (संरक्षण) नियमों का नियम 5 का उपनियम (4) यह उपबंधित करता है कि उपनियम (3) में किसी बात के होते हुए भी, केन्द्रीय सरकार को जब कभी यह प्रतीत होता है कि ऐसा करना लोकहित में है, वह उपनियम (3) के खंड (क) के अधीन सूचना की अपेक्षा से अभिमुक्ति दे सकेगी;

अतः, अब, केन्द्रीय सरकार, उक्त पर्यावरण (संरक्षण) नियमों, के नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित उक्त पर्यावरण (संरक्षण) अधिनियम की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात्:-

उक्त अधिसूचना में,-

(I) पैरा 6 में “सभी मामलों में पर्यावरणीय अनापत्ति मांगने के लिए कोई आवेदन,” शब्दों के पश्चात् “परियोजना प्रस्तावक द्वारा” किया जाएगा ।

(II) पैरा 7, के खंड (i) के उप पैरा II क्रम (2) विस्तारण के उप पैरा (i) के अंतिम वाक्य में “अनुसूची की मद 8 में प्रवर्ग ख के रूप में सूचीबद्ध सभी परियोजनाओं और क्रियाकलापों (संनिर्माण, नगरी/ वाणिज्यिक, काम्पलैक्स/आवासन)” के स्थान निम्नलिखित शब्द रखे जाएंगे, अर्थात्:-

“अनुसूची की मद 8(क) में प्रवर्ग ख के रूप में सूचीबद्ध सभी परियोजनाओं और क्रियाकलापों (निर्माण और संनिर्माण परियोजना)” ।

(III) अनुसूची में,-

(i) मद 1(क) के सामने ,-

स्तंभ (5) में की प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां रखी जाएंगी, अर्थात् —
“साधारण शर्तें लागू होंगी ।

टिप्पणः

(i) ऐसे खान पट्टे के नवीकरण के प्रक्रम पर पूर्व पर्यावरणीय अनापत्ति भी अपेक्षित है जिसके लिए आवेदन, नवीकरण की तारीख से एक वर्ष पूर्व किया जाना चाहिए ।

(ii) खनिज पूर्वक्षण छूट प्राप्त है ।”

(ii) मद 7(च) के सामने ,-

स्तंभ (4) में की प्रविष्टि के स्थान पर “ (i) सभी राज्य राजमार्ग परियोजनाएं; और” के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:-

“ (i) सभी नई राज्य राजमार्ग परियोजनाएं ” ।

(iii) मद 8(क) के सामने,-

स्तंभ (5) में की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:-

“इस अधिसूचना के प्रयोजन के लिए निर्मित क्षेत्र को “बेसमेंट (बेसमेंटों) सहित, समस्त मंजिलें एक साथ रखे जाने पर निर्मित या आच्छादित क्षेत्र और अन्य सेवा क्षेत्र जो निर्माण/संनिर्माण परियोजनाओं में प्रस्तावित किए गए हैं” के रूप में परिभाषित है।”

(IV) परिशिष्ट 5 के पैरा 3 के स्थान पर निम्नलिखित पैरा रखा जाएगा, अर्थात्:-

“ 3 जहां कोई लोक परामर्श आज्ञापक नहीं है वहां आकलन, विहित आवेदन प्ररूप-1 और पर्यावरणीय समाघात निर्धारण रिपोर्ट के आधार पर अनुसूची की मद 8 से भिन्न सभी परियोजनाओं और क्रियाकलापों की दशा में किया जाएगा। अनुसूची की मद 8 की दशा में इसके विलक्षण परियोजना चक्र को ध्यान में रखते हुए संबंधित पर्यावरणीय निर्धारण समिति या राज्य पर्यावरणीय निर्धारण समिति प्ररूप-1, प्ररूप-1क, धारणा योजना और पर्यावरणीय समाघात निर्धारण रिपोर्ट [केवल 8(ख) के अधीन सूचीबद्ध परियोजनाओं के लिए अपेक्षित] के आधार पर परियोजनाओं या क्रियाकलापों का आकलन करेगी और पर्यावरणीय अनापत्ति को प्रदान करने के संबंध में परियोजना पर या अन्यथा सिफारिशें करेगी तथा पर्यावरणीय अनापत्ति के लिए शर्तें भी नियत करेगी” ।

[फा. सं. 3-101/2010-आईए. III]

डा. नलिनी भट्ट, वैज्ञानिक 'जी'

टिप्पण: मूल नियम, भारत के राजपत्र, असाधारण, भाग 2, खंड 3, उपखंड (ii) में अधिसूचना सं. का0आ0 1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित किए गए थे और का0आ0 1737(अ), तारीख 11 अक्तुबर, 2007 और का0आ0 सं. 3067(अ), तारीख 1 दिसंबर, 2009 द्वारा संशोधित किए गए थे।

MINISTRY OF ENVIRONMENT AND FORESTS
NOTIFICATION

New Delhi, the 4th April, 2011

S.O. 695(E).— Whereas by notification of the Government of India in the Ministry of Environment and Forests vide number S.O. 1533(E), dated the 14th September, 2006 issued under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government directed that on or from the dates of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the said notification entailing the capacity addition with change in process and or technology shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, by the State level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act in accordance with the procedure specified therein;

And whereas, it has been decided to provide clarification with regard to the term "built up area" used in the said Notification and also to make various paras of the Notification mutually consistent and to restore the unintentional changes, which got into the Notification while making amendment vide S.O. 3067 (E) dated 1st December, 2009, in particular the entry against item no. 7(f) in the schedule to the EIA Notification, 2006 relating to highway projects and for this purpose to issue suitable amendments in the said Notification.

And whereas, clause (a) of sub-rule (3) of rule 5 of the said Environment (Protection) Rules provides that, whenever the Central Government considers that

prohibition or restrictions of any industry or carrying on any processes or operation in any area should be imposed, it shall give notice of its intention to do so;

And whereas, sub-rule (4) of rule 5 of the said Environment (Protection) Rules provides that, notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3);

Now therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the said Environment (Protection) Act, read with clause (d) of sub-rule (3) of rule 5 of the said Environment (Protection) Rules, the Central Government hereby makes the following amendments in the said Notification, namely:-

In the said notification, -

(I) In para 6, for the existing words "An application seeking prior environmental clearance in all cases shall be made", the following words shall be substituted, namely:-

"An application seeking prior environmental clearance in all cases shall be made by the project proponent".

(II) In para 7, in sub-para 7 in clause (i), sub para II, stage (2) – scoping, sub para (i), in the last sentence, for the words "activities listed as Category 'B' in item 8 of the schedule (Construction / Township / Commercial Complexes / Housing)", the following words shall be substituted, namely:-

"Activities listed as Category 'B' in item 8(a) of the schedule (building and construction projects)".

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(III) In the Schedule, -**(i) against item 1(a), -**

in column (5), for the entries, the following entries shall be substituted, namely:-

"General conditions shall apply.

Note:

- (i) Prior environmental clearance is as well required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal.
- (ii) Mineral prospecting is exempted."

(ii) against item 7(f), -

in column (4), for the entry "(i) All State Highway Projects; and" the following entry shall be substituted, namely:-

"(i) All New State Highway Projects".

(iii) against item 8(a), -

in column (5), for the entry, the following entry shall be substituted, namely:-

"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building / construction projects"."

(IV) In Appendix V, for para 3, the following para shall be substituted, namely:-

"3. where a public consultation is not mandatory, the appraisal shall be made on the basis of prescribed application Form-1 and EIA report, in the case of all projects and activities other than item 8 of the schedule. In the case of item 8 of the schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise projects or activities on the basis of Form-1, Form-1A, conceptual plan and the EIA report [required only for projects listed under 8(b)] and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance".

[F. No. 3-101/2010-IA. III]

Dr. NALINI BHAT, Scientist 'G'

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide notification number S.O. 1533(E), dated the 14th September, 2006 and amended vide S.O. 1737(E), dated the 11th October, 2007 and S.O. No. 3067(E) dated 1st December, 2009.

NATIONAL GREEN TRIBUNAL

Principal Bench, New Delhi

Appeal No. 37/2012
Wednesday, 3rd of October, 2012

Quorum:

1. Hon'ble Shri Justice V. R. Kingaonkar
(Judicial Member)
2. Hon'ble Shri Dr. Devendra Kumar Agrawal
(Expert Member)

BETWEEN:

Real Gem Buildtech Pvt. Ltd.
Gen. A. K. Vaidya Marg,
Goregaon East, Mumbai – 400 063 ... Appellant

AND

State of Maharashtra
Through the Environment Department
Member Secretary Environment
217, Mantralaya, Mumbai. ... Respondent

(Advocates appeared: Mr. Girish Godbole and Mr. Pankaj Rajmachikar
for Appellant, Mr. Mukesh Verma for Respondent)

ORAL ORDER (BY BENCH)

We have heard learned Counsel for the parties. We are inclined to dispose of the appeal finally in view of the fact that the question involved is rather short and can be addressed without any discussion of environmental issues.

2. The appellant sought the Environmental Clearance for a Housing Project. The Environmental Appraisal Committee (EAC) considered the proposal on 26.05.2010 for the first time. The appellant had sought construction of 3,67,044 sq.mtrs area including that of three basements. It is not necessary to elaborately state the facts of the matter, because later on the total area to be constructed was reduced by the appellant. The appellant also reduced the number of basements from 3 to 2. The appellant was granted permission to construct 3 basements by the Competent Authority under DCR Rule 33(24). It appears that previously the State Authority declined to grant Environmental Clearance. The appellant had therefore preferred an appeal to this Tribunal. This Tribunal in that appeal (Appeal No.1/2012) observed that the order of the State Authority was rendered beyond its jurisdiction. Yet the appellant was granted liberty to make a representation for consideration of the request seeking the EC for the project. The appellant made a representation and sought the EC. The EC has now been granted vide impugned order dated 24.02.2012. The appellant is aggrieved only in respect of the part of the order whereby the request of grant of EC for three basements is rejected and the EC is granted only in respect of two basements as per the earlier Minutes of Meeting.

3. The appellant submits that already three basements have been constructed in view of the permission accorded by the Competent Municipal Authority. The appellant had not then obtained necessary EC

from the respondent. It is thus; amply clear that one basement is additionally constructed without prior EC.

4. Perusal of the impugned order will make it clear that the request for grant of one additional basement has been rejected for the reason that reduction of three basements to the two was done as indicated by the appellant (Project Proponent). Another reason ascribed by the respondent is that each project is to be considered in totality not just by looking one of the components.

5. Upon hearing learned Counsel for the parties, it is amply clear that the impugned order does not reflect as to whether rejection of the EC for three basements was done on ground of any adverse environmental impact. **In fact, we find that no environmental issue is involved in the matter.** The material on record does not show that the third basement is likely to cause any serious impact on the environment. The Counsel for the respondent submits that the question of proper muck disposal, the disposal of debris and the disposal of earth excavation from the building and basement is also required to be considered. He submits that proper disposal of such waste material has to be ensured from the appellant. He further submits that if the third basement has been constructed without the EC then the appellant is liable for appropriate penalty under Section 15 of The Environment (Protection) Act, 1986. अधिकरण

6. Considering the fact that the impugned order does not reflect rejection of the request of the appellant on the ground of any environmental damage and same has been rejected only because of the earlier statement of the appellant that he would reduce the request for three basements to two, we deem it proper to hold that the impugned order suffers from deficiency because the relevant adverse impact on environment is not the reason for rejection of the request.

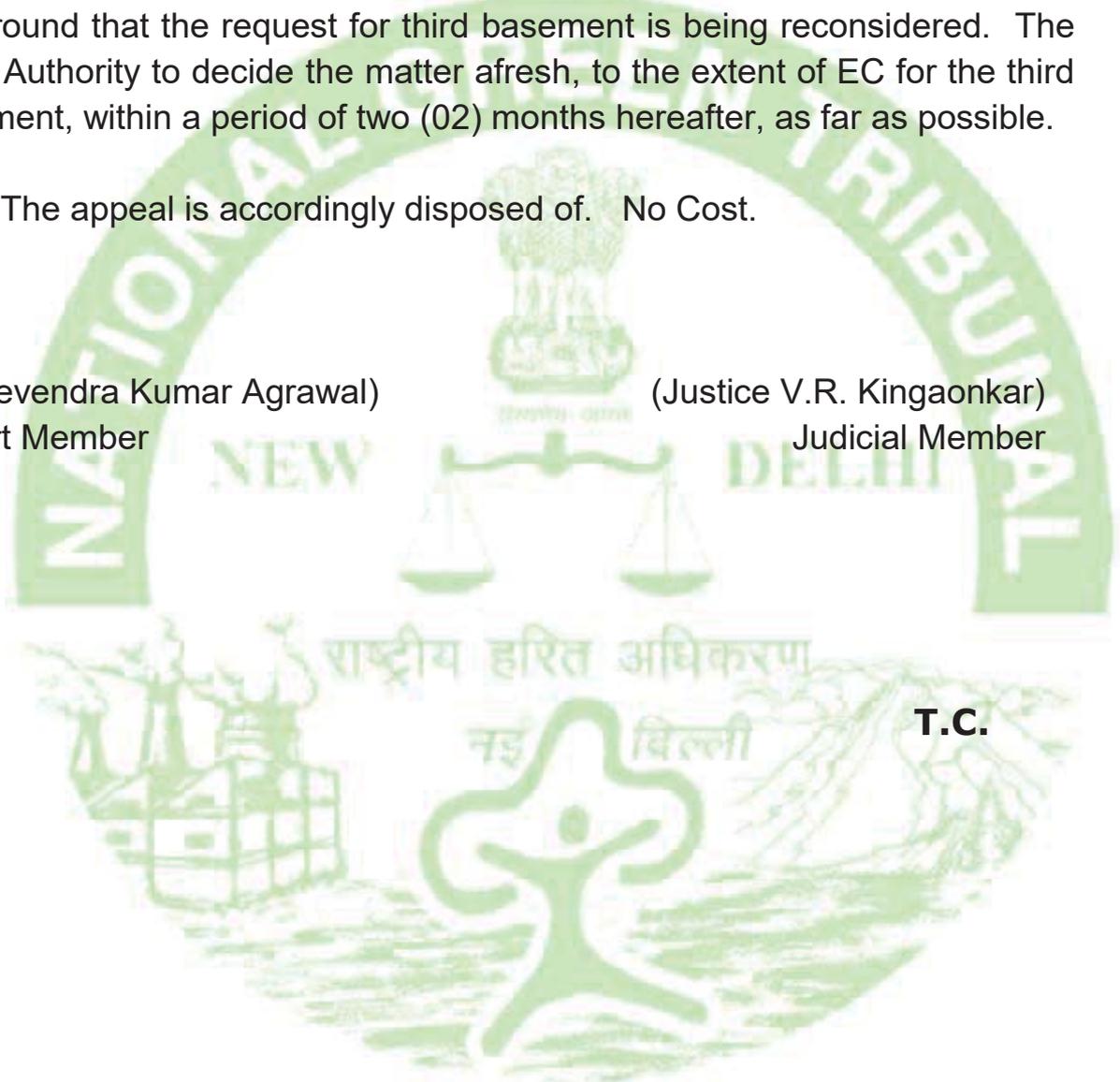
7. In view of the discussion made herein above, we are inclined to set aside the impugned part of the order and remit the matter to the State

Authority for reconsideration of the issue. It will be open for the State Authority to regularize three basements on certain conditions as may be imposed, inclusive of the direction to remove the muck, earth excavation and debris within a specific period and also to propose penalty of Rs. 1,00,000/- (one lakh) under Section 15 of the Environment (Protection) Act, 1986. We further make it clear that the appellant shall not make any change in design and will not be permitted to carry out any further construction beyond the permission granted by the State Authority, only on the ground that the request for third basement is being reconsidered. The State Authority to decide the matter afresh, to the extent of EC for the third basement, within a period of two (02) months hereafter, as far as possible.

The appeal is accordingly disposed of. No Cost.

(Dr.Devendra Kumar Agrawal)
Expert Member

(Justice V.R. Kingaonkar)
Judicial Member



T.C.

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPEAL NO.77 OF 2013(WZ)**

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

In The Matter of:

- 1. SHRI. ARVIND V. ASWAL.**
S/o Vijaybharat U. Aswal,
10, Mohmd. Ali Chawl,
Sai Chowk, Shashtri Nagar,
Balrajeshwar Road
Mulund (w)
Mumbai-400 080.
- 2. SMT. SANDHYA S. KULKARNI,**
Room No.3, Kissan Avati chawl,
Shashtri Nagar, Balrajeshwar Road
Mulund (w)
Mumbai-400 080.
- 3. SMT. SUMITRA A. NAGI,**
w/o Late Shri. Anandsingh K. Nagi
Room No.10, Rawal Chawl,
Sai Chowl, Shashri Nagar
Balrajeshwar Road,
Mulund (west)
Mumbai 400 080.

4.SMT. SAKHUBAI D. LANDGE.

W/o Late Shri. Dattu K. Landge,
Room No.8, Rawal Chawl,
Shashri Nagar, Balrajeshwar Rd,
Mumbai (West), Mumbai-400 080.

5.SMT. SHAKUNTALA, G. BHUVAD.

Room No.2, Kasar Chawl,
Shashri Nagar, Balrajeshwar Road,
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Mumbai 400 080.

6. SMT. MEENA S. LOHAR.

Room No.2, Kasar Chawl,
Shashri Nagar, Balrajeshwar Road,
Mulund (west)
Mumbai 400 080.

7. SMT.LAXMI K. MANJREKAR.

Room No.7, Transit Camp,
Shashri Nagar, Balrajeshwar Road,
Mulund (west)
Mumbai 400 080.

8. SHRI. HANUMAN T. JAGDALE.

Room No.7, Transit Camp,
Shashri Nagar, Balrajeshwar Road,
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10. SHRI. MUKUND B. LANDGE.

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Mumbai-400 080.

11. SHRI. MANMOHAN N.NALAWADE.

Room No.2, Ram Pyare Chawl,
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12. SMT. RUKHMANI TAKKAR.

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14. SHRI. VINOD S. PADIYAR.

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S/o Late Shri. Bakshulla Wajidali
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Room No.9, Manubhai Chawl,

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Mumbai-400 080.

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21. SMT. RABUDEVI BAHADURSINGH VISHWAKARMA.

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T. Vishwakarma
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Mumbai-400 080.

22. SHRI. SURENDRA HARINATH YADAV.

S/o Shri. Harinath G. Yadav.
D/303, 3rd Floor, Sai Sadan,
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Mulund (w).
Mumbai-400 080.

23. SHRI. UTHMAN KRISHANAN PANICKER.

No.8, Manubhai Chawl,
Shashtri Nagar, Bal Rajeshwar Road.
Mulund (w).
Mumbai-400 080.

24. SHRI. RAJENDRA S. LOHAR.

S/o Late Smt. Chabidevi S. Lohar.
R.No.1, Mohammadali Chawl,
Shashtri Nagar, Bal Rajeshwar Road.
Mulund (w).
Mumbai-400 080.

25. SHRI. MANOJ VIJAYBHARAT ASWAL.

No.9, Mohammadali Chawl,
 Shashtri Nagar, Bal Rajeshwar Road.
 Mulund (w).
 Mumbai-400 080.

26. SHRI. BHAGWAN RAMCHANDRA SABAT.

No.7, Mohammadali Chawl,
 Shashtri Nagar, Bal Rajeshwar Road.
 Mulund (w)
 Mumbai-400 080.

.....**APPELLANTS**

VURSES**1. ARIHANT REALTORS.**

101, Nilkanth Nagar,
 BPS Cross Road,
 Opp. Bank of India.
 Mulund (w),
 Mumbai-400 080.

2. MEMBER SECRETARY.

State Level Impact Assessment Authority,
 217, 2nd Floor, Ministry of Environment,
 Mantralaya Mumbai-400 032.

3. MEMBER SECRETARY,

State Level Expert Appraisal Committee
 217, 2nd Floor, Ministry of Environment,
 Mantralaya Annexe,
 Mumbai-400 032.

4. MS. VALSA NAIR SINGH.

Secretary Environment,
 Govt. of Maharashtra
 217, 2nd Floor, Mantralaya Annexe,
 Mumbai-400 032.

5. THE STATE OF MAHARASHTRA.

Through Its Environment Department,
 Mantralaya, Mumbai-400 032.

6. SLUM REHABILITATION AUTHORITY.

5th Floor, Griha Nirman Bhavan,
Bandra (East).
Mumbai-400 051.

7. PANDIT (SRA) CO-OPERATIVE HOUSING SOCIETY.

Shashtri Nagar, Bal Rajeshwar Road.
Mulund (w).
Mumbai-400 080.

8. UNION OF INDIA.

Through its Secretary,
MoEF,
New Delhi.

.....RESPONDENTS**COUNSEL FOR APPELLANT(s):**

Ms. Parul Gupta, Mr. Tushar Kochale,

COUNSEL FOR RESPONDENT(s):

Mr. Vipin Kamdi, Mr. R.B.Mahabal, for Respondent No.1.

Mr. Mukesh Verma, Mr. Pravesh Thakur, for Respondent
Nos. 2 to 4.

Mr.D.M.Gupte, a/w Supriya Dangre, for Respondent Nos. 2
to 5.

Mr. Preshit Surshe for Respondent No.6.

Mr. Sankalp Kashyap, Ms. Manisha Bhandari, Mr. Abhay
Parab, for Respondent No.7.

Ms. Neelam Rathore for Respondent No.8.

Date: April 8th, 2015**J U D G M E N T**

1. The Appellants named above, impugn the Environment Clearance (EC) bearing No.EAC-3512-SAR/501/TC-2, dated 20th February, 2013, issued by the

Environment Department, State of Maharashtra in favour of Respondent No.1, for construction of Residential-cum-Commercial project under Slum Rehabilitation Authorities (SRA) scheme on plot CTS No.4/6(pt), 4/7(pt), 7,7/1 to 3, 9(pt), 9/1 to 4, 10(pt) (CTS No.4/7 (pt), situated at Mulund (W) Mumbai. They also seek certain other incidental reliefs, including provision of greenbelt of 748.60sq.m and forty (40) number of parking places for their rehab buildings and STP for Rehab buildings, which are constructed for their Housing-Scheme.

2. There is no dispute about fact that the lands referred to above, had been declared as 'slum area' on 18.9.1975 and on 15.6.1996 respectively under the provisions of Maharashtra Slum Area (Improvement, clearance and Rehabilitation) Act, 1971. The property in question is declared as 'slum' on private lands under Section 4(1) of the said Act. Therefore, it came under the provisions of SRDH Scheme of the planning authority viz Municipal Corporation of Greater Mumbai (MCGM) with FSI being 2.5 as a special case for development of Slum Dwellers Housing Scheme (SDHS). On January 20th, 1997, the Additional Collector (A&C Bombay and BSD) issued certificate to the Members of Pandit (SRA) CHS Ltd, for their eligibility in respect of the

re-development project. On 8-1-1998 LOI was issued by SRA in the name of Pandit (SRA) Co-operative Housing Society Ltd.

3. Briefly stated, shorn of issues regarding violation of the Municipal Laws, the Appellants challenge impugned EC on the ground that construction activity had been commenced even before the EC was granted and, as such, the Respondent No.1, committed substantial violation of the EC conditions, as well as, caused environmental degradation. The Appellants further challenge impugned EC on the ground that construction work was directed to be stopped on 9.11.2011 by the Competent Authority, yet Respondent No.1 M/s Arihant Realtors, did not pay any heed to stop the work and proceeded with the work, which impeded their right to have necessary R.G. area for their project. Further case of the Appellants, is that parking area available to project occupied by them, is reduced due to the second phase of project of the Respondent No.1 in Pandit (SRA) CHS Ltd. They further allege that minimum 40 car parking slots are mandatory for their part of the housing society. But adequate parking space is not provided and it is practically impossible now to do so, because the occupants of rehab buildings are being forced to park their

vehicles in public i.e. open space left around the buildings i.e. R.G. area. So far as R.G area is concerned, the same is not contiguous and is divided in three (3) wings, which has caused environmental damage due to non-availability of fresh air, passage of light and ventilation to their buildings. The gap/space between their buildings bearing Nos. 'E' to 'D' being only of 3ft. which impacts adversely, because adequate light is not available for area inside the buildings, nor air is passing properly. Thus, Respondent No.1 has violated the norms of environment, which ought to be taken into account and EC deserves to be quashed and other reliefs sought by them may be granted.

4. Respondent No.1, resisted the Appeal on various grounds. His main contention is that SRA buildings were being taken up for construction by another builder/Project Proponent. He, subsequently, took over said project work from the earlier developer by name Siddhi Vinayak construction, who had done the work till 2009. Originally, the project was being carried out only by M/s Om-Sai Developers till 2000. Earlier developers had completed the buildings styled as Wing 'B' 'C' and 'D' up to about 90%. There was status quo issued by the City Civil Court in 2004, which was continued till 2009. Thereafter,

he obtained Environmental Clearance (EC) on 20th February, 2013. He proceeded with the work, only after clarification of O.Ms dated 6.6.2013 and 19.6.2013, and letter of Secretary, Environment Department to State Expert Appraisal Committee (SEAC), and State Environmental Impact Assessment Authority (SEIAA) dated 29.6.2013, communicating order passed by the Hon'ble High Court in case of "Saumya Buildcon". There is no variance between EC conditions communicated to him. He denied that parking is not provided as per the Rules. According to him, the buildings 'B' 'C' and 'D' are transit accommodations, therefore, there is no legal obligation to provide parking for these three (3) buildings. He alleges that rehab buildings need not be provided with car parking, because there is no such provision for it. He denied allegations that STP, is not provided to those rehab buildings. He further denied that R.G area is inadequate and improper. He contended that the Appeal is barred by limitation and is untenable. Therefore, Respondent No.1, sought dismissal of the Appeal.

5. By filing reply affidavit of Mr. Pimparkar – Scientist-I, Environment Department refuted all the material averments of the Appellants. Affidavit of Mr. Pimparkar,

shows that the conditions were imposed in the EC to provide STP and greenbelt before the impugned EC was granted. The affidavit of Mr. Pimparkar is brief and does not give proper information regarding status of the project.

6. At the outset, we may clarify that we are not required to deal with the issues regarding violations of the Municipal Laws. It is not therefore, necessary to examine whether any violation of DC Rules is done by Respondent No.1. The domain under the NGT Act, 2010, is to examine environmental issues. There is bifurcation of jurisdictional issues. Such legal position can be clarified and will be borne in mind, having regard to the ratio laid down in case of **Parshuram Ukarpur & Anr Vs State of Maharashtra & Ors-**

7. Coming to the main environmental issues involved in the Appeal, it may be stated that the Appellants are dwellers of slum area/residential accommodation, which were required to be constructed for the purpose of implementation of the SRA scheme. First phase of the SRA scheme is covered by the buildings, which have been constructed for occupation and use of the present Appellants. Second EC and the buildings indicated as building Nos. 'B' 'C' 'D', are required to be delivered to the

Govt. for use of Project Affected Persons (PAP); namely; the Members of Pandit CHS Ltd. It is pertinent to note that tenements in the SRA buildings are 480 in number. These buildings are supplied with drinking water by the Municipal Corporation of Greater Mumbai (MCGM). There is electricity supply available to these buildings. The case of Respondent No.1, inter-alia, is that he took over the project in question from Omsai Developers in the midst of commissioning of the project. Therefore, he is not responsible for deficiencies, which might have occurred in providing inadequate parking spaces, inadequate R.G. area and STP for entire construction project of SRA scheme in question. The proposal of SRA scheme, regarding "Pandit (SRA) CHS Ltd, residential- cum commercial project" was discussed by SEAC, Maharashtra in its meeting dated 29th and 30th November and 1st December, 2012. The description of scheme is shown as buildings bearing Wing Nos. 'A to D'= GR + 7, Wing 'E' = GR+8, out of them Wing 'B' comprises of GR+1 and 2nd business office + 3 to 5th. it may be of provided parking Floors + 6 to 22 and 23 Floor + 24 to 27 Residential Floors. The proposed construction was of six (6) buildings, including one sale place and five (5) rehab buildings. The observations of SEAC are significant. It is observed:

The project proposal was discussed on the basis of the presentation made, the documents and the present photographs of project site showing right of way to the project site submitted by the proponent. All issues related to environment, including air, water, land, soil, ecology and biodiversity and social aspects were discussed.

During discussion, following points emerged:

1. Project proponent informed that earlier owner initiated and completed construction of Wing B,C & D as per the LOI approved without obtaining the prior environmental clearance. Hence, Environment Department/ SEIAA, after due verification, may initiate action against violation under Environment (Protection) Act, 1986.
2. PP to submit LOI of the earlier project and revised LOI of June 2012.
3. PP to submit revised parking area calculations as per the NBC Norms.
4. PP, in addition to the proposed energy saving measures, to install solar panels to generate power, explore the possibility of installing lift irrigation system and revise energy saving plan accordingly.

After deliberation, Committee decided to recommend the proposal for Environmental Clearance to SEIAA, subject to compliance of above points.

- 8.** Having regard to above observations, it is amply clear that implementation of 'Pandit (SRA) CHS Ltd'

residential-cum-commercial scheme' was found to be improper in view of various deficiencies noted by the SEAC. Respondent No.1 was called upon to submit LOI of the earlier project and revised LOI of June, 2012. It may not be out of place to mention here that Respondent No.1, desired to seek advantage of O.M. dated 7th February, 2012, issued by the MoEF, for the purpose of remodeling/revision of the project and thereafter make 'Pandit (SRA) CHS Ltd' residential-cum-commercial scheme' functional by making the construction at the site. Even prior to the EC, relevant environmental issues, including air, water, land, soil, ecology and biodiversity verification including revised parking area calculations, as per National Building Construction (NBC) Norms, was necessary and action against Respondent No.1, under provisions of the Environment (Protection) Act, 1986, also was to be initiated for his highhandedness caused during the construction work, but he completed the construction up to the plinth level pending the EC. So, it was recommended that SEIAA, after due verification may initiate action against violations against the Environment (Protection) Act, 1986, against Respondent No.1.

9. We may, however, point out that during course of 54th Meeting of SEIAA, held on 3rd /4th January, 2013, the issues were discussed as regards action to be taken and parking area calculations, as per NBC Norms. What was considered by SEIAA, as satisfactory reasons to drop such recommendation of SEAC, regarding action to be initiated under the Environment (Protection) Act, 1986? It is interesting to note that SEIAA, only relied upon clarifications given by the Respondent No.1 in the meeting that proposal was initiated in 1998, when the conditions for requirement for obtaining EC, were quite different than conditions and long delay has taken place due to Court Cases, amongst three (3) developers regarding transfer of rights, which was decided by the Hon'ble Supreme Court. The Respondent No.1 pleaded that since the work was initiated long back and delay has occurred for above reasons, there is no violation of the Environment (Protection) Act, 1986. The other conditions stipulated by SEAC, were reportedly complied with. Needless to say, SEIAA did not find it necessary to verify whether the construction was done by Respondent No.1 up to the plinth level without obtaining the EC, or that it was the act of any earlier developer. Be as that may be, action could have been

taken under Section 5 of the Environment (Protection) Act, 1986. There is no reason as to why recommendations of SEAC were given go-by in the context. Fact remains that word of Respondent No.1, was accepted by SEIAA as gospel truth in this context.

10. We find that during discussion of minutes of SEIAA, the revised parking calculation was also not done by the Authority, nor it was furnished by Respondent No.1 to satisfaction of SEIAA by giving any revised plan with which the scheme was to be implemented. Thus, 'Pandit (SRA) CHS Ltd' residential-cum-commercial scheme' was given push to go ahead without any kind of deduction or permutation and combination method in the parking area and any kind of revision of calculations of parking area, as per NBC Norms , though the same had not been furnished by Respondent No.1. The description of particulars in the EC, described as item No.6, in the minutes of meeting of SEIAA, go to show that the calculations of parking area as per NBC Norms , was ignored either inadvertently or with some oblique motive. Otherwise, such categorical recommendations of SEAC, could not have been overlooked by the SEIAA, without any substantial reason. Only one

basement was provided in the sale building in the EC issued by SEIAA.

11. In the above backdrop, we shall meticulously examine the Joint Report submitted by the Court Commissioners, who were appointed by this Tribunal to visit the site. This Tribunal appointed Advocate Mr. V.P. Patil and Prof. J.S.Main by consent of the parties to visit the site of 'Pandit (SRA) CHS Ltd' for inspection of the property. They visited the site in order to conduct the survey as directed by this Tribunal. They noted that the buildings 'B' 'C' 'D', are complete and used as transit facility for residents of 'Pandit (SRA) CHS Ltd'. They further noted that buildings 'A' and 'E' are under construction as per information given by the Respondent No.1 and building 'E' will be complete by March, 2015 and building 'A' will be completed by June, 2015. Thereafter, occupants of standing buildings 'B' 'C' 'D' will be shifted to buildings 'A' and 'E'. Respondent No.1, after such construction and shifting of occupants of transit accommodators Respondent No.1, will handover buildings 'B' 'C' 'D' to Govt. for use of PAP. The Court Commissioners noted that there is no provision made for parking slots for rehab buildings as required in the revised EC. As stated before, no such

provision is made while considering the revised EC by SEIAA inspite of recommendation of SEAC to examine the issue of parking slots, in accordance with NBC Norms. The Commissioners also noted that sewage in buildings 'B' 'C' 'D' is treated in septic tank to the extent of part thereof and part thereof is collected by MCGM for final disposal. Respondent No.1's authorized agent or partner by name Mr. Sanjay Patil, assured the Court Commissioners that STP will be fully commissioned and sewage treatment will be completely done within short span. It was found that R.G area is less than required open space as per the norms, having regard to area of construction. The required R.G area is 600.10sq.m. but provided R.G. area is only 378.49sq.m. An area of 138sqm at one place is provided as R.G. area. Obviously, R.G area is not contiguous and is divided at three (3) places. Out of said R.G. area, one part of R.G. area consisting 59.61sq.m. is situated beyond Nullah, where there is encroachment and that R.G area is not accessible to the residents. Resultantly, actual R.G. area available to the residents of SRA, scheme is 318.88sqm. Respondent No.1, has thereby reduced recreational facility of the Appellants and others practically to the extent of about half area, than required as per the Law. The purpose of R.G.

area is to allow fresh air to the residents, playground for children and recreational area for old men/women as well as Youngers. They are deprived of such recreational area and, as such, they are deprived of enjoying dignified life due to illegal acts of Respondent No.1. This is not only denial of dignified life to them, but is an act of endangering environment which is part and parcel of maintaining proper balance between life-cycle interlinked with human life, biodiversity, air, water and all other natural faculties around human beings, which are associated with existence of human as well as existence of surrounding. The inspection work was carried in presence of both the parties and, therefore, it cannot be said that parking facility is wholly internalized and any public place is included as permissible slots for parking. Though, certain objections are filed by Mr. Vinod Padiyar to the joint Inspection Report, yet, we are of the opinion that such objections are not maintainable, inasmuch as both the commissioners have unanimously observed that the second EC does not comprise of any calculation of parking area inspite of recommendations of SEAC. Needless to say, both the Court Commissioners have no reason to give any incorrect information to the Tribunal. Both of them are independent

persons. One of them is an Advocate, practicing in the High Court and is pretty senior. Another is Professor and there was no opposition to their appointment as the Court Commissioners. The objections to such joint Report of Commissioners are unnecessarily, likely to cause aspiration on their credibility, which we think is improper. If we will allow such practice to go on, the final decision making process will be endless and the litigants may go to the extent of challenging credibility of justice delivery system, without any reason or rhyme, as and when adverse decision is rendered. Unfortunately, now-a-days, such practice is growing. Of course, in our opinion, Advocate Mr. Kochale appears to be fair. It may be noted that initially LOI of SRA scheme was approved on 6.1.1998 and subsequently two (2) buildings in the lay-out of rehab buildings with five (5) wings, namely; A to E, and sale building had been approved. LOI for rehab building 'A' was approved on 18.12.2010 and the construction permission was granted on 19.4.2011. IOA for rehab building 'E' was approved on 7.7.2011 and plinth approval was granted on 28.4.2011. The photographs Ex. 17, shows that Nullah is flanked by retaining walls of considerable height. It appears that filthy water and effluents are discharged in the said Nullah. It goes without

saying that water of said Nullah is contaminated, unuseful and polluted. The R.G beyond Nullah is, therefore, of no use for SRA scheme. The provision for R.G area beyond Nullah is no sort of cheating the residents and occupants of SRA scheme of which the Appellants are beneficiaries.

12. On behalf of Respondent No.1, it is vehemently argued that whatever earlier developer had done was responsibility of the said developer for which present Respondent No.1, cannot be held responsible and that no action should be taken against him. It is argued that some of the spaces were already constructed before the project was handed over to the Respondent No.1 and hence, the Respondent No.1 was helpless when deficiencies had been already caused like commencement of construction up to plinth level. It is argued that R.G. area and Nullah was already planned by the previous developer, which plan was approved by the competent authority and hence, the Respondent No.1 cannot be held liable to provide more R.G area as sought by the Appellants. It is further argued that the prayers of the Appellants are now, likely to turn the hands of clock back, which would cause greater financial loss not only to Respondent No.1, but to poor people, who are the beneficiaries of the SRA scheme. Consequently,

learned Advocate for Respondent No.1, would submit that the Appeal deserves to be dismissed.

13. Countering above arguments, learned Advocate Shri. Kochale contended that the construction work was stopped by MCGM due to complaint made by Shri. Padiyar, but subsequently, the Respondent No.1 proceeded with construction up to plinth level without obtaining EC. He argued that the Respondent No.1, failed to provide parking area notwithstanding such defect pointed out during meeting of SEAC, may be it was not provided in the EC. Yet, it was mandatory to follow the DC Rules, which categorically made him liable to provide such area. He further argued that STP was not provided by Respondent No.1, and mere fluttery assurances should not have been accepted by the SEIAA. He contended that during pendency of the construction work adequate septic tank ought to have been provided by Respondent No.1, along with soak pits, in order to maintain environmental safeguards. Failure of Respondent No.1, to maintain such safeguards, is environmental degradation. According to Shri. Kochale, learned Advocate, the Respondent No.1, acted irresponsibly and caused environmental degradation, which is being hood-winked by the authorities like the Respondent Nos. 3

to 8 and, therefore, strict action may be directed to be taken against him by this Tribunal.

14. In our considered opinion, the Respondent No.1, cannot take any shelter under the guise of his taking up implementation of SRA scheme for reason of acts done by earlier developers viz Omsai developers, inasmuch as he is supposed to take over the scheme with liabilities and benefits as per the Transfer of Property Act, as well as the common Laws. He cannot shy away from the responsibility and would be permissible to say that he is entitled only to the benefits of the scheme taken over by him. He must accept the benefits as well as losses whichever might have occurred, as a result of implementation of the SRA scheme in question. He cannot play hot and cold in this context. The defence set up by him, is, therefore, rejected. Considering the report of Court Commissioners, Respondent No.1, is required to provide R.G. area of 600sq.m which he has reduced to the extent of 318sq.m. He has paved R.G area of 232.36sq.m. In fact, the paved area of R.G is also incorrect and improper. Respondent No.1, has not provided greenbelt, as required under the norms. There was no reason for SEIAA, to dislodge objections raised by SEAC. The SEAC, categorically

recommended that it was necessary to revise parking norms as per NBC Norms , not only that Respondent No.1, did not submit such revised parking area calculations as per NBC Norms , but SEIAA gave complete go-by to the requirement of parking area while granting impugned EC. The impugned EC, is, therefore, improper and without application of mind. Though, it is found to be illegal, having regard to the fact that most of the SRA buildings are ready for occupation and many poor people are being accommodated in such buildings, it would be harsh to quash and set aside the EC, which would be rather against the principles of natural justice. For, all the affected occupants of such rehab buildings are not parties before the Tribunal. They are not heard. Moreover, the rationale decision in such a matter, is required to be taken, which may prevail even though there is some impropriety committed by the Authorities. As stated before, some of the part of project was completed by the developers namely; M/s Omsai developers and it is possible that SRA scheme implemented in the first phase at that time to certain extent before the project was taken over by Respondent No.1. The impropriety on the part of authorities, should not cause heavy loss to Respondent No.1, which may ultimately cause eviction of occupants of transit

dwellers, who are expecting shifting to the buildings constructed for their rehabilitation. Under these circumstances, in our opinion, the construction and EC obtained by Respondent No.1, for SRA scheme, shall be treated as *fate-accompli*. The prayers 'A' and 'B' made by the Appellants in the Appeal cannot be, therefore, granted.

15. The Applicants who are claimants of parking spaces of the Appellant society, are required to be accommodated in the remaining construction of the parking area shall be provided to them at stilt and first floor without considering other parts of the said buildings of Pandit SRA CHS Ltd, because rights of the Appellants existed before Pandit SRA housing Scheme came into existence and was under consideration for development by the developer (Respondent No.1), who could have made changes in the plan of construction for provision of parking spaces, as per requirement of both the Housing societies.

16. So far as R.G. area is concerned, the Respondent No.1, shall provide required R.G. area of 748.66sq.m. as well as parking spaces as per NBC Norms, after approval of SEIAA for which SEIAA, may reconsider the proposal and revise the EC.

We partly allow the Appeal and direct that:

- (A)** The EC proposed is remitted to SEIAA for reconsideration to the extent of fixation of parking spaces and the greenbelt as well as R.G. area. The impugned EC be remitted to SEIAA for reconsideration and till then it shall be deemed as inoperative. The Respondent No.1 shall not carry out any construction work for the period of three (3) months in respect of present buildings till the issue regarding above three (3) aspects, are decided by SEIAA, for the purpose of which the impugned EC is remitted to the Authority for reconsideration. The SEIAA shall distribute the parking slots as per NBC Norms first to the Appellant's HGCS and later on to Pandit HGCS, as per the availability of such parking spaces for allotment.
- (B)** SEIAA, also shall reconsider re-alignment of R.G. area and if any space is not available then one of the vacant flat from available accommodation from sale building, shall be converted to R.G. facilities, providing facilities like Community Hall, Table Tennis, Library, Gym etc. which can be accommodated in the area available.
- (C)** SEIAA, shall not grant further permission (EC), to remaining part of construction until all the conditions

are found to have been satisfactorily complied with by the Project Proponent. Unless such verification of the EC in question is done it shall remain in abeyance to the extent of remaining part of construction, excluding construction, which is already done. The SEIAA shall particularly ensure that proper STP facilities are made available to rehab buildings of the Appellants and that Nullah is cleared, as well as is covered with proper iron mesh to avoid dumping of MSW.

- (D) In case of any occupant, who is eligible and entitled to have parking space for tenement, is ready and willing to surrender the same, he shall be paid proper compensation after due negotiations, but the same shall not be unreasonable and shall be as per market price prevailing in the area.

With above directions, the Appeal is accordingly disposed of. No costs.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay A. Deshpande)

Date: April 8th, 2015.
hkk



Ax-K

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**Scheme for Accreditation
of EIA Consultant Organizations:
Version 3**



**NATIONAL ACCREDITATION BOARD FOR EDUCATION AND TRAINING
QUALITY COUNCIL OF INDIA**

June, 2015

T.C.

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A 2.3.2 Air pollution monitoring, prevention and control

a. Educational qualifications specific to functional area

i. Engineering–Environmental/Chemical/Mechanical/Civil/Mining/Chemical technology,

or

ii. Master’s (post graduate) degree in Science subjects/Environmental Sciences/ Environment Management/Environmental Studies/ Industrial Pollution Control/ Chemical Technology/Physics / Chemistry and the like.

b. Experience specific to functional area

i. Air pollution monitoring

- Meteorology - measurement of wind speed, wind direction, relative humidity, wet and dry bulb temperature, rainfall etc.
- Air quality monitoring – selecting locations of sampling stations, monitoring/ supervision of monitoring of suspended and respirable particulate matter (PM 2.5 and PM 10), SO₂, NO_x, CO, hydrocarbons and other relevant parameters as per NAAQ standards, including handling of relevant equipment, collection and preservation of the samples
- Stack monitoring - particulate matter, SO₂, NO_x, and other relevant parameters
- Inventorization of greenhouse gas emissions

ii. Air pollution prevention and control

- Reduction in process emissions at source
- Reduction in fugitive emissions
- Identifying and assessing quantum of emissions
- Identification of probable impacts of the different air emissions from the plants/facilities proposed
- Identifying the most suitable control device e.g. condensers, chillers, spray systems, scrubbers, cyclones, ESPs, bag filters etc.
- Knowledge/experience on design consideration of air pollution control systems and their efficiencies
- Interlocking control systems with production plants, where possible
- Adequate knowledge of EIA Legislation process in India
- Contribution to EIA documentation
- Understanding of policies, guidelines and the legislation related to air pollution
- Knowledge of international treaties related to emissions and preparing cost estimates for control systems will be an added advantage.

c. Training (preferable)

Specialized course/training in air pollution measurement, prevention, monitoring, air pollution or control equipment.

A 2.3.3 Meteorology, air quality modeling and prediction**a. Educational qualifications specific to functional area**

i. Engineering - Environmental/ Civil/ Chemical,

or

ii. Master's (post graduate) degree in Meteorology/Environmental Sciences/ Environment Management/ Environmental Studies/ Industrial Pollution Control/ Physics/ Chemistry/ Mathematics/ Statistics/ Atmospheric Sciences and the like.

b. Experience specific to functional area must include :

- i. Developing micro meteorological data for use in modeling
- ii. Collecting and using secondary data on meteorology like cloud cover, inversion related data, mixing heights etc., for modeling
- iii. Application of relevant air quality models in prediction of dispersion of pollutants, plotting of isopleths of GLCs representing incremental pollution levels, worst case scenarios on suitable maps showing both, the sources of pollution as well as the environmentally sensitive receptors.

The models used should be able to address source to receptor scenarios for point sources, area sources and line sources. The models should also conform to the requirements of CPCB.

The following are the additional expectation from the expert:

- Adequate knowledge of EIA Legislation process in India
- Contribution to EIA documentation
- Understanding of policies, guidelines and the legislation specifically related to air pollution

c. Training (preferable)

Specialized course/training on air quality modeling, air pollution meteorology, atmospheric sciences and impact prediction.

A 2.3.4. Water pollution monitoring, prevention and control**a. Educational qualifications specific to functional area**

i. Engineering - Environmental/ Chemical/ Civil/ Mechanical,

or

- ii. Science Subjects - Public Health/ Environmental Sciences/ Environment Management/ Environmental Studies/ Natural Resource Management/ Industrial Pollution Control/ Chemistry/ Biochemistry/ Biotechnology/ Toxicology/ Microbiology/ Hydrology/ Geo-hydrology and the like.

b. Experience specific to functional area must include

- i. Water and waste water monitoring
 - Designing sampling network for water and waste water
 - Techniques and requirements of sampling of water and waste water for EIAs including type of samples and parameters to be monitored.
 - Supervision/monitoring of water and waste water parameters required for EIA studies including preservation of samples
- ii. Water conservation and prevention and control of pollution
 - Water use auditing, water balance, water budgeting, water conservation, and developing schemes for cascading use (recycle, reuse) of water
 - Identification, characterization and segregation of effluent streams
 - Knowledge/experience on design consideration of various types of treatment systems to achieve 'zero liquid discharge' from different types of industries.
 - Performance evaluation of water and waste water effluent treatment systems including physico-chemical and biotic treatment.
 - Identification of probable impacts of effluent/waste water discharges in to the receiving environment/water bodies.
 - Water quality modeling for prediction of impacts of effluent discharge into receiving water bodies
 - Adequate knowledge of EIA Legislation process in India
 - Contribution to EIA documentation
 - Understanding of policies, guidelines and legislations related to Water Pollution

c. Training (preferable)

Specialized course/ training on water pollution and control technologies.

A 2.3.5. Ecology and biodiversity

a. Educational qualifications specific to functional area

- i. Master's (post graduate) degree in life-sciences like Zoology/ Botany/ Forestry/ Environmental Science/ Ecology/ Natural Resource Management/ Ecology & Environment/ Ecology & Biodiversity/ Geography and the like.

b. Experience specific to functional area must include

- i. Basic knowledge of the application of taxonomy in resource inventory (flora and fauna) of the project area
- ii. Conducting ecological/wildlife surveys and preparation of status reports for rare, endangered and threatened species of animals and plants and also species protected under national laws
- iii. Experience of providing guidance and support for conservation of species and their habitats
- iv. Adequate knowledge of EIA legislation process in India
- v. Understanding of policies, guidelines and legislations related to ecology biodiversity conservation
- vi. Specialized training in the field of impact assessment and ecological monitoring will be an added advantage
- vii. Contribution to EIA documentation

c. Training (preferable)

Training on Ecosystem analysis and evaluation, landscape ecology, assessment of impacts on ecological and biodiversity impact assessment on ecology/ biodiversity from development projects in all sectors.

A 2.3.6. Noise and vibration**a. Educational qualifications specific to functional area**

- i. Engineering - Mining/ Mechanical/ Electrical/ Instrumentation/ Civil/ Environmental /Aeronautical

or

- ii. Master's (post graduate) degree in Acoustics/Environmental Sciences/ Environment Management/ Environmental Studies/ Physics/ Geophysics/ Statistics or in any other subject covering noise/ vibration measurement, prediction and control

b. Experience specific to functional area must include

- i. Monitoring of noise/vibration levels using specific instruments, processing and analysis of data
- ii. Prediction of noise/vibration isopleths using relevant models in residential, sensitive (hospitals, educational institutions, religious places etc.), commercial and industrial areas from traffic on urban roads, highways and railways; aviation and noise due to commercial, industrial and community activities,
- iii. Probable impacts of noise on communities and of vibration on buildings, structures, archeological monuments etc

- iv. Impacts of noise and vibration on fauna from projects in ecologically sensitive areas
- v. Control of noise emanating from mining operations, vehicles, airport, industries, machines, community activities, highways, railways etc. along with knowledge on design and optimization of noise/vibration attenuation devices.

It is also expected that the expert has the following knowledge/experience:

- Adequate knowledge of EIA legislation process in India
- Contribution to EIA documentation
- Understanding of policies, guidelines and the legislation related to noise pollution

c. Training (preferable)

Noise - Specialized training on measurement of noise levels, impacts on human health and behaviour, noise modeling and prediction, protection devices against high noise levels, design and review of noise reduction/control systems.

Vibration – Measurement, analysis and prediction of vibrations from mining operations, vibration studies in industrial operations, protection measures etc.

A 2.3.7. Socio-economics

a. Educational qualifications specific to functional area

Master's (post graduate) degree in

- i. Social Welfare / Sociology/ Political Science/ Psychology/ Geography/ Anthropology/ Economics/Environmental Economics/Urban Planning/Regional Planning/ Environmental Planning, Developmental Sciences

or

Rural Development and Management – rural economics/ Economic Sociology/ Demographic Studies

or

- ii. MBA (Rural Management)

or

- iii. Any other social science related subject

or

- iv. 2 years Post Graduate Diploma in Sociology from recognized institution like Tata Institute of Social Sciences, Xavier Institute of Social Sciences, Ranchi/Xavier Institute of Management, Bhubaneswar/XLRI, Jamshedpur and other reputed institutes.

b. Experience specific to functional area must include

- i. Conducting baseline socio-economic surveys through interviews/ questionnaire/

- focused group discussions/participatory rural appraisal (PRA)/rapid rural appraisal (RRA)
- ii. Methodologies on extrapolation of census data to project an up-to-date status including selected ground validation of the same
 - iii. Conduct social needs assessment studies
 - iv. Evaluation of socio-economic status of both tribal and non-tribal areas
 - v. Demonstrated capacity to interact and develop rapport at community level will be an added advantage
 - vi. Conduct Rehabilitation and Resettlement (R & R) studies for people displaced due to developmental projects and development for R & R plan
 - vii. Assessment of social changes arising out of development projects

The following are the additional expectation from the expert:

- Adequate knowledge of EIA legislation process in India.
- Contribution to EIA documentation.
- Understanding of policies, guidelines and the legislation related to R & R issues

c. Training (preferable)

Training on Social Impact Assessment of development projects in Rural/ Urban areas.

A 2.3.8 Hydrology, ground water and water conservation

a. Educational qualifications specific to functional area

- i. Engineering - Civil/Mining/Mechanical/Hydraulic

or

- ii. Master's (post graduate) degree in Geology/Applied geology/ Geophysics / Hydrology / Surface hydrology / Hydrogeology / Water resources management.

b. Experience specific to functional area must include

- i. Analysis of surface hydrological data pertaining to flow fluctuation, estimation of flows at 10, 50 and 90 percentile levels; setting up and interpretation of gauging station readings, designing of ground water table measurement and monitoring network, computation of ground water recharge, flow rate and direction.
- ii. Plotting of ground water contours.
- iii. Analysis and description of aquifer characteristics e.g. permeability, transmissivity, storage coefficient etc., estimation of groundwater potential and recharge phenomenon, determination of impact of withdrawal of groundwater.
- iv. Preparation of water budget for an area.
- v. It is also expected that the expert has the following knowledge /experience:
 - Adequate knowledge of EIA legislation process in India.

- Contribution to EIA documentation.
- Understanding of policies, guidelines and the legislation related to ground water

c. Training (preferable)

Specialized training/course on impacts on hydrology and ground water from/by developmental projects.

A 2.3.9 Geology

a. Educational qualifications specific to functional area

- i. Engineering – Mining/ Earth Resource Engineering

or

- ii. Master's (post graduate) degree in Geology/Applied Geology/ Geophysics/ Earth Sciences

b. Experience specific to functional area

- Geology and Geo morphological analysis/description.
- Stratigraphy/Lithology.
- Vibration analysis in relation to mining operations.
- Developing geological maps.
- Development of Mining plan incorporating environmental aspects like top soil preservation, waste dump management, reclamation/rehabilitation of mined out areas, run off management etc.
- Environmental impacts of 3 phases of mining – exploration, exploitation and post mining stages
- It is also expected that the expert has the following knowledge/experience:
 - Adequate knowledge of EIA legislation process in India
 - Contribution to EIA documentation
 - Understanding of policies, guidelines and the legislation related to Mining.

A 2.3.10 Soil conservation

a. Educational qualifications specific to functional area

- i. Engineering – Agricultural/Civil Engineering

or

- ii. Master's (post graduate) degree in Agricultural Sciences/Soil Sciences/ Earth Sciences/Forestry/Chemistry/Botany/Natural Resource Management and the like

b. Experience specific to functional area must include

- i. Sampling, analysis and characterization of soil
- ii. Assessment of fertility/productivity of soil, nutrient availability
- iii. Assessment of impact of gaseous, liquid and solid pollutants on soil
- iv. Management of soil salinity
- v. Remediation of soil pollution/contaminated soils
- vi. Controlling degradation of soil/soil conservation
- vii. It is also expected that the expert has the following knowledge/experience:
 - Adequate knowledge of EIA legislation process in India
 - Contribution to EIA documentation
 - Understanding of policies, guidelines and the legislation related to the subject area

c. Training (preferable)

Assessment of soil contamination and remediation techniques

A 2.3.11 Risk assessment and hazard management**a. Educational qualifications specific to functional area**

- i. Engineering- Chemical/ Mechanical /Fire Engineering/Chemical Technology, Mining (for Mining EIAs only)

or

- ii. Master's (post graduate) degree in Toxicology/ Chemical Technology/ Industrial Safety/ Chemistry or in subjects dealing with identification, assessment and management of risk and hazards, Seismology(for River valley projects only), Dam Break Analysis (for River valley projects only)

or

- iii. Post graduate diploma (1 year or above) in Industrial Safety from a University/ recognized Institute after graduation in engineering/technical subjects or post-graduation in a science subject

b. Experience specific to functional area must include

- i. Identification of hazards and hazardous substances
- ii. Risks and consequences analysis using latest software such as Phast Micro, SAFETI, ALOHA or other relevant software.
- iii. Preparation of impact diagrams
- iv. Vulnerability assessment
- v. Preparation of on-site Emergency Preparedness Plan

- vi. Preparation of off-site Disaster Management Plan
- vii. It is also expected that the expert has the following knowledge/experience:
 - Adequate knowledge of EIA legislation process in India
 - Contribution to EIA documentation
 - Understanding of policies, guidelines and the legislation related to emergency response, off-site and on-site emergency plans, safety and occupational health etc

A 2.3.12 Solid and hazardous waste management

a. Educational qualifications specific to functional area

- i. Engineering - Chemical/ Civil/ Environmental, Mining (for Mining EIAs only)

or

- ii. Master's (post graduate) degree in Chemical Technology/Chemistry/ Toxicology/ Environmental Sciences/Natural Resource Management/ Natural Science

This functional area comprises three parts

- Municipal Solid Wastes (MSW)
- Non-hazardous industrial Solid Wastes (ISW)
- Hazardous Wastes including biomedical waste (HW)

b. Experience specific to functional area must include

- i. Handling municipal solid wastes
- ii. Methodologies for segregation and collection of MSW
- iii. Methodologies of gainful utilization of MSW
- iv. Designing of landfill sites for safe disposal of MSW
- v. Familiarity with MSW Rules
- vi. Handling non-hazardous industrial solid wastes
- vii. Recycling and reuse of solid wastes
- viii. Handling and disposal methodologies of high volume non-hazardous solid wastes
- ix. Handling hazardous wastes
- x. Knowledge of Hazardous Wastes (Management, handling and trans boundary movement) Rules, Basal Convention and other relevant legislations
- xi. Identification of hazardous wastes
- xii. Incineration, neutralization, stabilization, treatment, storage and disposal of hazardous wastes

- xiii. Knowledge/experience in designing of Treatment Storage and Disposal Facility (TSDF) for hazardous solid wastes
- xiv. It is also expected that the expert has the following knowledge/experience:
- Adequate knowledge of EIA legislation process in India
 - Contribution to EIA documentation
 - Understanding of policies, guidelines and the legislation related to Municipal, Industrial solid and Hazardous waste management

Experts having experience on all the three above will be considered for FAE – SHW (solid and hazardous wastes). Those having experience in a specific area out of above, will be considered for the respective field e.g: FAE (HW), FAE (MSW) etc.

c. Training (preferable)

Training on identification, inventorization, collection, handling, storage, treatment and disposal of Hazardous wastes/ Solid wastes/ Municipal Solid wastes

General note –

- a. 'And the like' – this expression has figured with reference to qualification requirement of the Scheme. The following explains the justification for use of this phrase
- b. 'If a particular qualification addresses the requirements of a functional area as mentioned in this Scheme but is not included in the list, the Accreditation Committee would take a view of such course curriculum and supporting documents for confirming to its equivalence to B. Tech/ M. Sc.
- c. Degrees from Foreign Universities may be considered if found equivalent to Degrees given in respective domains by Indian universities based on a detailed study of the respective curriculum by the assessors. Such cases are then put up to the accreditation committee for its consideration.
- d. Training should be relevant to the sector/s for ECs and area/s of expertise for FAEs. The duration of the training should be minimum 3 days and conducted/organized by Universities, Research Institutes, Professional Bodies, Industry Associations or other recognized organizations.

A 2.4 Expected functions of functional area experts (FAEs)

The FAEs should keep updated with the latest technological information and relevant publications in the concerned area of expertise. S/he should also have broad concept of life cycle assessment (LCA), strategic impact assessment (SIA), carrying capacity, ecological/ carbon footprint, energy analysis, corporate sustainability reporting (CSR).

The expected functions of FAEs to include:

A 2.4.1 Prior to the receipt of work order

- a. Understanding of the overall project configuration with special reference to her/his concerned functional area/s
- b. Visiting the site with the EC.

A 2.4.2 On receipt of the work order

- a. Review and understanding the project from Pre-feasibility report (PFR)/ Feasibility report (FR).
- b. Interacting with the EC and other FAEs to get a holistic view of the EIA.
- c. Focused efforts on her/his specific functional area to identify the gaps and subsequently work towards addressing with other team members.
- d. Visiting sites and assisting the EC/s in the selection of sampling locations and deciding the type of samples by FAEs involved in bio-physical aspects such as air, water, soil, bio-diversity, HG, Geo etc.
- e. Visiting the site and the laboratory periodically to ensure the quality and validity of baseline data (for FAEs dealing with bio-physical aspects, this includes assessing the quality of sampling, preservation, transportation and analysis of samples).
- f. Direct involvement of FAEs specially of the functional areas such as EB and SE - in the development of methodologies/formats to be adopted for the collection of baseline data or validation of secondary data.
- g. Analyzing and interpreting the baseline data collected; identifying and assessing potential impacts arising due to various project activities, products and services during different stages of the project.
- h. Ensuring that all potential impacts including those under abnormal/accidental conditions for various stages of the project are addressed with quantification, where applicable.
- i. Interacting with other FAEs to make sure that potential impacts on the other functional areas
- j. Developing the EMP and post project monitoring plan and their associated costs in consultation with the EC.
- k. Ensuring compliance to all TOR issued by MoEFCC/SEIAA pertaining to her/his area of expertise.
- l. Discussing, developing and submitting the functional area report with supporting tables, figures and photographs to the EC.
- m. Addressing the issues raised during the public hearing in the specific functional area report.
- n. Suggesting alternatives of location and designs for the project, if required.



For further details contact:

Mr. Abhay Sharma, Assistant Director

Ms. Preeti Pawaria, Accreditation Officer

National Accreditation Board for Education and Training (NABET)

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No.	Functional Area	Qualification
1	Air pollution monitoring (AP)	Engineering-Environmental/Chemical/Mechanical/Civil/Mining/Chemical technology OR Master's (post graduate) degree in Science subjects/Environmental Sciences/ Environment Management/Environmental Studies/ Industrial Pollution Control/ Chemical Technology/Physics / Chemistry and the like.
2	Air Quality modeling (AQ)	Engineering - Environmental/ Civil/ Chemical OR Master's (post graduate) degree in Meteorology/Environmental Sciences/ Environment Management/ Environmental Studies/ Industrial Pollution Control/ Physics/ Chemistry/ Mathematics/ Statistics/ Atmospheric Sciences and the like.
3	Water pollution monitoring (WP)	Engineering - Environmental/ Chemical/ Civil/ Mechanical OR Science Subjects - Public Health/ Environmental Sciences/ Environment Management/ Environmental Studies/ Natural Resource Management/ Industrial Pollution Control/ Chemistry/ Biochemistry/ Biotechnology/ Toxicology/ Microbiology/ Hydrology/ Geo-hydrology and the like.
4	Socio-economics (SE)	Social Welfare / Sociology/ Political Science/ Psychology/ Geography/ Anthropology/ Economics/Environmental Economics/Urban Planning/Regional Planning/ Environmental Planning, Developmental Sciences OR Rural Development and Management – rural economics/ Economic Sociology/Demographic Studies OR MBA (Rural Management) OR Any other social science related subject OR 2 years Post Graduate Diploma in Sociology from recognized institution like Tata Institute of Social Sciences, Xavier Institute of Social Sciences, Ranchi/Xavier Institute of Management, Bhubaneswar/XLRI, Jamshedpur and other reputed institutes.
5	Ecology and biodiversity (EB)	Master's (post graduate) degree in life-sciences like Zoology/ Botany/ Forestry/ Environmental Science/ Ecology/ Natural Resource Management/ Ecology & Environment/ Ecology & Biodiversity/ Geography and the like.
6	Solid and hazardous waste management (SHW)	Engineering - Chemical/ Civil/ Environmental, Mining (for Mining EIAs only) OR Master's (post graduate) degree in Chemical Technology/Chemistry/ Toxicology/Environmental Sciences/Natural Resource Management/ Natural Science
7	Municipal Solid Wastes (MSW)	Engineering - Chemical/ Civil/ Environmental, Mining (for Mining EIAs only) OR Master's (post graduate) degree in Chemical Technology/Chemistry/ Toxicology/Environmental Sciences/Natural Resource Management/ Natural Science
8	Hazardous Wastes including biomedical waste (HW)	Engineering - Chemical/ Civil/ Environmental, Mining (for Mining EIAs only) OR Master's (post graduate) degree in Chemical Technology/Chemistry/ Toxicology/Environmental Sciences/Natural Resource Management/ Natural Science
9	Non-hazardous industrial Solid Wastes (ISW)	Engineering - Chemical/ Civil/ Environmental, Mining (for Mining EIAs only) OR Master's (post graduate) degree in Chemical Technology/Chemistry/ Toxicology/Environmental Sciences/Natural Resource Management/ Natural Science
10	Land use (LU)	Civil Engineering / Physical Planning / Architecture / Town Planning/ Environmental Planning/ Environmental Engineering OR Science subjects - Geo Informatics or Remote Sensing or Geographic Information System / Environment Management / Geo-Engineering / Geography / Geophysics / Geology/Applied Geology OR Other than those stated above, Post graduate degree in science subjects, or a Bachelor's degree in technical subjects followed by specialized training in GIS/ Remote Sensing/ Cartography (not less than 2 months duration) from an University/ recognized institutions like NRSA, ISRO, IIRS, IIFM and the like
11	Noise and vibration (NV)	Engineering - Mining/ Mechanical/ Electrical/ Instrumentation/ Civil/ Environmental/Aeronautical OR Master's (post graduate) degree in Acoustics/Environmental Sciences/ Environment Management/ Environmental Studies/ Physics/ Geophysics/ Statistics or in any other subject covering noise/ vibration measurement, prediction and control
12	Hydrology, ground water and water conservation (HG)	Engineering - Civil/Mining/Mechanical/Hydraulic OR Master's (post graduate) degree in Geology/Applied geology/ Geophysics / Hydrology/ Surface hydrology / Hydrogeology / Water resources management.
13	Geology	Engineering – Mining/ Earth Resource Engineering OR Master's (post graduate) degree in Geology/Applied Geology/ Geophysics/ Earth Sciences
14	Soil conservation (SC)	Engineering – Agricultural/Civil Engineering OR Master's (post graduate) degree in Agricultural Sciences/Soil Sciences/ Earth Sciences/ Forestry/ Chemistry/ Botany/Natural Resource Management and the like
15	Risk assessment and hazard management (RHM)	Engineering- Chemical/ Mechanical /Fire Engineering/Chemical Technology, Mining (for Mining EIAs only) OR Master's (post graduate) degree in Toxicology/ Chemical Technology/ Industrial Safety/ Chemistry or in subjects dealing with identification, assessment and management of risk and hazards, Seismology(for River valley projects only), Dam Break Analysis (for River valley projects only) OR Post graduate diploma (1 year or above) in Industrial Safety from a University/ recognized Institute after graduation in engineering/technical subjects or postgraduation in a science subject

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

**MISC. APPLICATION NO. 74 OF 2015
(ARISING OUT OF APPLICATION NO.10 OF 2014)**

CORAM:

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(Judicial Member)
HON'BLE DR. AJAY A.DESHPANDE
(Expert Member)**

In the matter of:

1. LAKHAN MUSAFIR.

Village Umarva (Joshi),
Tal. Nandod, P.O. Gora Colony,
Dist. Narmada, Gujarat.

2. ROHIT PRAJAPATI.

37, Patrakar Colony, Tandalji Road,
Vadodara 390 020, Gujarat.

3. SAVITABEN GANPATBHAI TADVI.

Village Indravarna, Tal.Nandod,
Dist. Narmada, Gujarat.

4. MAVAJIBHAI JESANGBHAI TADVI.

Village Nana Piparia, Tal. Nandod,
Dist Narmada, Gujarat.

.....APPLICANTS

VERSUS

T.C.

1. SARDAR SAROVAR NARMADA NIGAM LIMITED,

Through Chairman, Block No.12,
New Sachivalaya,
Gandhinagar,
Gujarat-382 010.

2. THE STATE OF GUJARAT,

Through Chief Secretary,
Having his office at 1st Block,
3rd Floor, Sachivalaya,
Gandhinagar, Gujarat.

3. UNION OF INDIA,

Through the Secretary,
Ministry of Environment & Forest,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110 003.

4. THE CHAIRMAN,

Environment Sub Group of
Narmada Control Authority,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110 003.

5. UNION OF INDIA,

Through the Secretary,
Ministry of Social Justice and
Empowerment, Shastri Bhavan,
New Delhi-110 001.

6. THE CHAIRMAN,

R & R Sub-Group of
Narmada Control Authority,

Ministry of Social Justice and
Empowerment, Shastri Bhavan,
New Delhi-110 001.

7. UNION OF INDIA,

Through the Secretary,
Ministry of Water Resources,
Shram Shakti Bhavan, Rafi Marg,
Parliament Street, New Delhi-110 001.

8. THE CHAIRMAN,

Narmada Control Authority (NCA),
Shram Shakti Bhavan, Rafi Marg,
Parliament Street, New Delhi-110 001.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr. Mihir Desai Advocate a/w Lara Jesani, Avubha Rastogi, Neha Pathak, Mr. Asim Sarode, Alka Babaladi Advocates.

Counsel for Respondent (s):

**Mr. P.S. Narsimha, Additional Solicitor General,
Mr. Maninder Singh Additional Solicitor General,
Mr. Tushar Mehta Additional Solicitor General a/w
Mr Nirzar S. Desai, a/w Mr. Parth H. Bhatt, Mr. Nalin Kohli, Mr. Virrrar S. Desai Advocates for Respondent No.1.
Mr. Parth H. Bhatt, Adv a/w Mr. Nirzar Desai Advocates for Respondent No.2
Shweta Busar Adv holding for Mr. Ranjan Nehru Advocates for Respondent No.3.**

**Mr. Krishna D. Ratnaparkhi Advocates for Respondent
Nos. 5 to 8.**

DATE : 1ST SEPTEMBER, 2015

JUDGMENT

1. Brief submissions put forth by way of objections regarding maintainability of the Application are certain material preliminary issues raised by the contesting Respondent Nos.1 and 2.

2. We may reproduce the preliminary objections raised on behalf of them, which are indicted in the Order dated March 3rd, 2015.

“Heard learned Counsel Mr. Mihir Desai for the Applicant, Mr. Maninder Singh and Mr. Tushar Mehta Additional Solicitor Generals for the Respondent No.1.

There are preliminary objections raised on behalf of Respondents. Preliminary objections are three (3):

i) That the Application is barred by limitation, if it is considered under Section 15 of the National Green Tribunal Act, 2010, along with Ss.14 (1) as well as 14(3), because extension of period under the Limitation Act, 1963, is impermissible since NGT Act, 2010 does not allow extension of limitation as per the Land Acquisition Act, 1963, being a special enactment and Section 33 of the NGT Act, gives overriding effect to the general Law.

ii) The Application is barred as the Applicants have no *locus standi* to file such Application for the reason that the Applicant Nos.1 and 2 either are busy bodies, who have no concern with the project in question or have no connection with result of the project, nor they are affected by the project, in any way and do not benefit within Section 15 of the NGT Act and other Applicants are beneficiaries, who are estopped from claiming any further relief due to their conduct.

iii) The Application is barred by the principle of "*Res-judicata*", in view of Judgment of the Apex Court in '**Narmada Bachao Andolan**', and other Judgments cited by them because the issue is covered by abovementioned Judgment and, therefore, now, there is no reason to separately deal with such issue to reconsider or allow the same to be re-agitated and legally decided.

Out of the preliminary objections, above preliminary objections have been argued by Mr. Tushar Mehata and Mr. Maninder Singh, Additional Solicitor Generals.

Mr. Mihir Desai, learned Advocate makes a statement that so far as question of limitation is concerned, the Application is filed under Ss. 14(1) and 14(3) of the NGT Act, and only if he can surmount difficulties regarding limitation for filing of such Application under Ss. 14(1) and 14(3) of the NGT Act, by showing this Tribunal that such Application is maintainable, then and then alone his Application may be considered for the relief which he is seeking i.e.

for restoration, or, else his Application under Section 15 for restoration will go away. In other words, if the Applicants would be able to show that the Application is filed within period of six (6) months and thereafter grace period of sixty (60) days, is available if satisfactory reason shown for extension of time, then this Tribunal may entertain the Application and may allow the Applicants to cross the hurdle, else, penultimate result would be that the Application would fail.

So far as question of locus standi is concerned, Mr. Mihir Desai, is yet to argue and make his stand clear as to whether his Application will be maintainable. He has yet to make submissions on third objection regarding Res-judicata. Learned ASG has submitted copies of the Judgments on question of Res-Judicata, in order to clarify third preliminary objection raised and would submit that the matter was directly and substantially in issue in previous proceedings, therefore, now the present Application is liable to be dismissed.

In this view of the matter, we would proceed further with the arguments of Mr. Mihir Desai. “

3. However, considering cumulative tenor of submissions put forth by Additional Solicitor Generals Sh. Narsimha Rao, Sh. Tushar Mehta and Sh. Maninder Singh, following points are set out as being the preliminary objections:

- i) Whether the Application cannot be entertained because of constitution of Narmada Control Authority (NCA) as controlling mechanism by Judgment of the *Narmada Bachao Andolan vs Union of India and Ors.*?
- ii) Whether the Application is barred by Limitation, because it does not fall within ambit of Section 15 read with Section 18 of the NGT Act, 2010?
- iii) Whether the Original Application is maintainable at the instance of the Applicant or liable to be dismissed, due to absence of 'locus standi'?
- iv) Whether the Application is barred by principle of Res-judicata and, as such, is not maintainable in view of the principle underlying Explanation-IV of Section 11 of the Code of Civil Procedure, 1908?

POINT NO. (i):

Whether the Application cannot be entertained because of constitution of Narmada Control Authority (NCA) as controlling mechanism by

Judgment of the Narmada Bachao Andolan vs Union of India and Ors.?

4. The Applicants have filed the present Application seeking reliefs against the Respondents inter alia for staying/stopping ongoing construction at or in respect of Garudeshwar Weir, initiating legal action against the erring officers, individuals and companies that have started construction or given permission for construction of Garudeshwar Weir in contravention of the provisions of the Environment (Protection) Act, 1986 and Environmental Sub Group (ESG) and Relief and Rehabilitation Sub Group (RSG) of the Narmda Control Authority (NCA) and for restitution of the project area to *status quo ante*. It is the case of the Applicants that the Respondents have encroached construction in respect of the Garudeshwar Weir project, without having obtained environmental clearance, without having carried out any environmental impact assessment and/or without having undertaken any environmental safeguards and measures.

5. The Applicants submit that Garudeshwar Weir project is a project spread out over vast land tracts, which is irreversible in nature and is bound to lead to

the submergence, fully or partially, of 11 villages and affect directly or indirectly, about 11,000 villagers in Gujarat. The Garudeshwar Weir project is admittedly a Category 'A' Project under the Environment Impact Assessment Notification, 2006. The Garudeshwar Weir project will have significant social and environmental impacts, and would have the potential of affecting the fisheries in the upstream and downstream areas; and also, affect the river downstream and its biodiversity and other related aspects right up to sea. It is the case of the Applicants that no concrete plan or social impact assessment for the Garudeshwar Weir has been submitted by the Respondents prior to commencement of construction of Garudeshwar Weir. No environmental clearance has been obtained in respect of the Garudeshwar Weir project to date, and in any event, no environmental impact assessment or any other environmental safeguards and measures have been undertaken prior to commencing construction in respect of the Garudeshwar Weir Project.

6. We may, however, also state that prior to raising above three (3) specific preliminary objections, one of the preliminary objection was raised by

learned Additional Solicitor General Sh. P.S.Narsimha, during course of hearing dated December 23rd, 2014, on the ground that due to constitution of Narmda Controlling Authority (NCA) under directions of the Apex Court in case of **“Narmada Bachao Andolan vs Union of India and Ors” (2000) 10 SCC 664**, all the relevant issues will have to be decided by the said Authority, which has exclusive jurisdiction to deal with relevant issues, stated in the present Application and hence, the National Green Tribunal (NGT), cannot entertain instant Application under Ss. 14,15 and 18 of the NGT Act, 2010. In other words, it was argued that jurisdiction of this Tribunal to entertain Application stands ousted due to establishment of NCA and as such, the main Application cannot be entertained at all.

7. So far as question of ouster of jurisdiction is concerned, learned Advocate Mihir Desai, appearing for the Applicants would submit that NCA has been established by the Govt. with a view to device grievances redressal system for States of Gujarat, Maharashtra and Madhya Pradesh. He would submit that Judgment of the Apex Court in **“Narmada Bachao Andolan”** (supra), does not bestow any

powers to the Tribunal viz. Narmada Sarovar Control Authority (NCA) to deal with 'settlement of environmental disputes', as provided under Section 14(1) of the NGT Act, 2010, but objective thereof is to ensure implementation of Resettlement and Rehabilitation (R & R) Policy, in three (3) States, namely, Gujarat, Maharashtra and Madhya Praesh. The above three (3) States were to get benefits of project as well as some of the families were likely to be affected by the project called "Sardar Sarovar Project" (SSP). He referred to paragraph (22) of Judgment of the Apex Court.

8. Countering arguments of Mr. Mihir Desai, learned Additional Solicitor General Sh. P.S. Narasimha, invited our attention to paragraph (174) of the Judgment (as referred in 'Manupatra'). It is stated in sub-para (7) of paragraph (174), that the authority was "to undertake any of the authority in the matter of resettlement and rehabilitation (R&R) pertaining to SSP and IPS". Taking cue from such statement in sub-para (7), it is argued that the statutory authority will have jurisdiction to decide which of the activities related to resettlement and rehabilitation are permissible and legal. In other words, restitution or compensation, as can be

considered, under Section 15 of the NGT Act, 2010, cannot be matter of decision making process that may be undertaken by this Tribunal. It is amply clear from the record that the Applicant No. 4 had filed proceedings claiming enhancement of compensation under provisions of the Land Acquisition Act, 1894, alleging that his lands were acquired for the purpose of “Garudeshwar Weir” in 1987. He was paid compensation by the District Court. Dissatisfied with the amount of compensation awarded, he approached the Hon’ble High Court of Gujarat, claiming more amount of compensation. He is beneficiary of acquisition of the lands. He is not legally entitled to claim relief of compensation, inasmuch as issue is already settled under the Land Acquisition Act, 1894 which is a special enactment. Nor he is entitled to restitution of the property, because once the land acquired by the Govt. under provisions of the Land Acquisition Act, 1894, the property stands transferred in favour of Govt. As regards the Applicant Nos.1 and 2, they are not person affected due to project in question. The question pertaining to “settlement of dispute” is different from the scope of Section 15 of the NGT Act, 2010. In this view of the matter, the jurisdictional issue raised by the learned

Additional Solicitor Sh. Narsimha Rao bears no ring of merit. We deem it fit to reject the objection in this context, and hold that the original Application is maintainable. Constitution of NCA, in our opinion, will not oust jurisdiction of the NGT in case of the Application falls within ambit of Section 14(1) of the NGT Act, 2010.

POINT No.(ii):

Whether the Application is barred by Limitation, because it does not fall within ambit of Section 15 read with Section 18 of the NGT Act, 2010?

9. We shall now proceed to deal with the objection as regards Limitation. According to contesting Respondent No.1, Garudeshwar Weir is an integral part and parcel of comprehensive project of SSP, which was envisaged a way back. The cause of action to file such Application could have arisen when project of SSP, inclusive of Garudeshwar Weir, was contemplated, planned and approved in or about 1985-86. The planning department of Gujarat Govt. was directed to execute the project vide letter dated October 5th, 1988, issued by Planning Commission, Yojana Bhawan, Sansad Marg, New Delhi. It is contended that agricultural lands were acquired

thereafter and compensation was paid to the said Project Affected Persons (PAP), including the Applicant Nos.3 and 4, as per the Award rendered under the Land Acquisition Act, 1894. The main project was inaugurated on April 5th, 1961. The land acquisition proceedings were commenced in 1987 by issuance of Notification under Section 4 of the Land Acquisition Act, 1894. So, the Applicants had full and clear knowledge regarding proposed project of Garudeshwar Weir, for which the lands were being acquired at the relevant time.

10. In order to describe nature of activities of Garudeshwar Weir, it is stated that the same is of much public significance, because it would enable reversible power generation at the underground power house units (6 Turbine) of 200MW each, (already constructed and commenced several years ago), which will enable production of maximum electricity under all conditions of water availability by use of reversible turbines. The water from Weir would be pumped back during night time for reversible use to run turbines through canal head power used at a higher elevation thereby generating additional power at peaking hours for the same quantity of water through river bed power house.

11. Chief bone of contention raised by the Respondent No.1, is that limitation period prescribed under Section 14(1) of the NGT Act, is only of six (6) months, in view of sub-clause (3) of Section 14. The period of limitation cannot be extended by the Tribunal, because the NGT Act, 2010, is a special enactment to which provisions of Limitation Act, 1963, are not applicable. The Application having not been filed within period of six (6) months from first day of alleged 'cause of action', which had arisen a way back, when Sardar Sarovar Project (SSP), was envisaged, or at all even, as alleged in the Application the work was allotted to M/s Ritwick Construction Pvt. Limited in 2012 then the limitation triggered because the original Applicants have come out with a case that they had knowledge of absence of environment impact assessment. It is contended that period of limitation is not of five (5) years, but is only of six (6) months, in view of Section 14(3), because, Section 15, does not apply to the fact situation.

12. Per contra, the Applicants allege that letter of Shri. Shekhar Singh, an individual Member of the Respondent No.4, i.e. Environmental Sub Group (ESG), brought on surface of the record illegalities regarding construction activities of Garudeshwar

Weir project. Therefore, the Applicants urged Respondents to stop construction activity at the site. Inaction of the Respondents to do so would give rise to the cause of action. The Applicants allege that construction in respect of Garudeshwar Weir project commenced only in the year September/October, 2013. So, until commencement of actual construction, they had no occasion to be alarmed about illegality of the project. The acquisition of lands for the project in the past could not give rise to cause of action, because such acquisition of lands had no bearing upon issue of knowledge regarding absence of required EC to the project in question. The Original Applicants would submit, therefore, that cause of action first arose when construction activity was illegally started by the Respondents. Reliance is placed on observations in “**Amit Maru vs The Secretary, MoEF and Ors**” (M.A. No.65/2014 in **Application No. 13 of 2014**), dated October 1st, 2014, delivered by this Bench and in the matter of “**Kehar Singh S/o Sh. Singhram vs. State of Haryana**” (**Application No.124/2013**) dated September 12th, 2013, delivered by Hon’ble Principal Bench of the NGT.

13. Nobody will deny that question of limitation is ordinarily, a mixed question of law and facts. The facts which are undisputed may be considered to deal with the issue before examining as to whether the Application would be maintainable within purview of Section 14 of the NGT Act, 2010. The Applicants have placed on record letter dated March 24th, 2013, issued by Sh. Shekhar Singh, who was the Member of ESG of Narmada Control Authority (NCA) -an Inter-State Administrative Authority. It appears that he gave his opinion that Garudeshwar Weir will have potential of stock of fisheries in the immediately surrounding areas and also in the area downstream river and its biodiversity and other relevant aspects. He made it clear that he had no knowledge as to how without assessment of cumulative environmental impact of the project and activities in the area, evaluation of bids for construction of Garudeshwar Weir were called for and the bidder M/s Rithwik Project Pvt. Ltd, Hyderabad was awarded the contractual work. He also made categorically clear that “I understand that subsequent to this decision, the work of construction of Garudeshwar Weir (GW) has been started on the ground”.

14. The above letter is the main plank of the Applicants based upon which the Applicant Nos.1 and 2, issued a letter dated 26th October, 2013, to the MoEF & CC. This letter dated 26th October, 2013, reiterates what Sh. Shekhar Singh opined and stated in his letter.

15. Now, it does appear that the Respondents have not produced any record to show as to what kind of response was given to above communication. The question herein is as to whether absence of response, if it is not given within reasonable time, can indefinitely extend period of limitation. Secondly, whether letter of Sh. Shekhar Sing, which was not in public domain, could trigger limitation for filing such an Application under Section 14(1) read with Section 18 of the NGT Act, 2010, is yet another question. So far as case of the Applicants is concerned, their averments in the Application may be reproduced as follows:

Limitation:

The Applicants herein are seeking stoppage of construction of Garudeshwar Weir which commenced only in October 2013 and are approaching this Hon'ble Tribunal within the limitation of 5 years as specified.

16. The averments made in the abovementioned paragraph clearly indicate that the Applicants laboured under impression that limitation of five (5) years, as specified under Section 15 of the NGT Act, 2010, could be availed by them, inasmuch as construction of Garudeshwar Weir had commenced only in October, 2013. They never came out with a case that they had no knowledge about absence of EC to the project of Garudeshwar Weir. Nor it is their case that because of absence of inaction on the part of Respondents/Authorities the period of limitation stands extended. As stated before, by order dated March 3rd, 2015, it is recorded that learned Advocate Sh. Mihir Desai, made a statement that so far as question of limitation is concerned, the Application is filed under Ss. 14(1), (3) of the NGT Act, 2010 and only if he can surmount difficulties, by showing this Tribunal that such Application is maintainable, then and then alone the Application may be considered for reliefs which he is seeking, namely, for restoration etc. or else, his Application under Section 15 for will go away. Obviously, it is essential to examine whether the Application is within limitation, as provided under Section 14(1) read with Section 14(3) of the NGT Act, 2010. We have already clarified that there is

no question of granting relief of compensation, because the affected owners of the lands have been paid such compensation under the Land Acquisition Act, 1894. Once such compensation is paid, there cannot be duality of granting the same relief in any other proceedings. There cannot be two opinion about legal position that the NGT Act, 2010, being a special enactment, the Tribunal has no power to extend period of limitation. There is plethora of case law on this legal aspect. We may only mention few of such cases viz (1) **Save Mon Region Federation vs Union of India & Ors** (M.A No. 104 of 2012 arising out of Appeal No.39 of 2012) as well as (2) **Medha Patkar vs MoEF & Ors Ors** (Appeal No.1 of 2013) and those others as discussed hereafter in paragraph 32 in the Judgment. We need not deal with each of the case law for want of avoiding reiteration of settled legal position in this behalf.

17. The scope of Section 14 (1) of the NGT Act, 2010, is to deal with “substantial question relating to environment”. These questions may include infringement / infraction of any legal right of a person relating to environment. The questions relating to environment, however, ought to be demonstrated, being in the category of

implementation of the enactments specified in Schedule-I of the NGT Act. The Applicants would submit that grounds to be put forth in the Application, fall within domain of the Environment (Protection) Act, 1986, which is shown in Schedule-I. The legal rights of the Applicants were allegedly trampled in or about September, 2013, when the actual work of Garudeshwar Weir started and they were alarmed after commencement of the work. It is not for the first time that they came to know about nature of Garudeshwar Weir project. They had already been well informed that Garudeshwar Weir project required acquisition of lands. In fact, agricultural lands of Applicant No. 4- Mavjibhai were acquired. He had contested the acquisition proceedings, had claimed more compensation and had fought for such claim up to the Hon'ble High Court. Thus, the Applicants had knowledge of potential implementation of Garudeshwar Weir project, which was in the offing. The knowledge could be traced back to 1978 or at least, till acquisition proceedings, which had commenced somewhere in 1997. There was no whisper at that time about legal rights relating to environmental issues arising out of the Environment (Protection) Act, 1986. The said Act

had already come into force when acquisition proceedings were initiated. The second occasion was when the construction of Garudeshwar Weir work was allotted to M/s Ritwick Construction Pvt. Ltd in 2012.. The Applicants have not mentioned date when actual construction at the site was noticed by them. It appears that instant Application was presented to this Tribunal on January 16th, 2014.

18. At this juncture, it is pertinent to note that the Environment (Protection) Act, 1986, came into force w.e.f. May 26th, 1986. Before the said enactment, the field was governed by a Notification issued by the MoEF & CC on January 27th, 1994. By virtue of the said Notification, certain restrictions were placed on expansion and modernization of activities of the new project, without obtaining EC, in accordance with S.O. No.80-© dated January 28th, 1993. Earlier, there were only internal guidelines of the MoEF. Needless to say, till commencement of the Environment (Protection) Act, 1986, and more particularly EIA Notification of January, 1994 no EC was required for any such project.

19. Perusal of record shows that Garudeshwar Weir was the project activity envisaged much before

the Environment (Protection) Act, 1986, came into force. Whether actual construction started was in 2013, is not of much significance. The very fact that since year 1997, the acquisition proceedings had started and that was well known to the Applicant Nos. 3 and 4 as well as other beneficiaries, go to show that the said project was an ongoing activity. The Apex Court in “**Goan Real Estate and Construction Ltd & Anr Vs Union of India**, Through the Secretary, Ministry of Finance & Forest and Ors, (W.P. (c) No.329 of 2008)” held that “subsequent change in legal position in that case viz “**Indian Council for Enviro Legal Action Vs. Union of India & Ors**”, (1996) 5 SCC 281), could not be applicable to “ongoing project and would not impact such ongoing activity which was already underway.”

20. So far as the project of Garudeshwar Weir is concerned, there is no dispute about the fact that it is being set up around 12kms downstream of Sardar Sarovar Dam situated in Narmda district (East Gujarat). The Applicants, named above, categorically state in the pleadings of instant Application as follows;

“In 1987 a conditional EC and in 1988 conditional planning commission EC was given to this Project. A copy of conditional EC is at Annexure-2 and a copy of conditional planning commission EC is at Annexure-3.....”

“The present Application is only concern with a small segment of this entire project. The main segment of Sardar Sarovar Dam has already been substantially constructed.”

“The original Sardar Sarovar Project (SSP), which got permission in 1987, did not concretely envisage this Weir, did not include assessment of social or environmental impact of this Garudeshwar Weir.....”

“While there may have been ideas at some stage a Weir may be constructed at Garudeshwar, the Environmental Authorities did not have power with them in the 1980's, with any concrete plan or social impact assessment for this Weir, nor would be environmental impact and how much submergence would take place. This Weir is practically a separate project and not something which is covered by 1987 conditional EC.”

21. According to Applicants, in September, 2013, work in respect of this Dam (Garudeshwar Weir) started, and alarmed by this, the Applicants took various steps. They came to know that way back on

24th March, 2013, Sh. Shekhar Singh, an independent Member of Respondent No.4, of Sub-Committee had addressed a letter to the Chairman of the Respondent No.4, in which it was stated that issue pertaining to social impact of construction and operation of Garudeshwar Weir had not been brought before the Environmental Sub-Group (ESG) of NCA. The Applicants further aver that Garudeshwar Weir is a part of the power component of SSP in which Madhya Pradesh and Maharashtra have 57% and 27% share respectively, in both costs and benefits. Therefore, implementation of Garudeshwar Weir cannot be taken up without express consent from these States, which these States have not agreed with the way Gujarat has decided to go ahead. It is the case of Applicants that cause of action arose for filing of the Application only in October, 2013, and hence, they have approached the Tribunal within period of five (5) Years. Thus, it is their case that the Application is squarely covered by Section 15 of the NGT Act, 2010, and hence, limitation of five (5) years can be availed. The construction of Garudeshwar Weir, assuming for a moment, that it is a separate project, its work was allegedly undertaken in October, 2013. The Applicants have not mentioned any

particular date of knowledge as to when they noticed work of construction. However, in para (F) of the Application, it is stated that around March, 2012, it was decided to award contract to one bidder M/s Ritwik Project Pvt. Ltd, for construction of Garudeshwar Weir.

22. On behalf of Respondents, learned Additional Solicitor Generals contended that the Application is barred by limitation, in view of embargo specifically put on raising of dispute after period of six (6) months, under Section 14 (1) of the NGT Act, 2010. They argued that mere perception of Sh. Shekhar Singh, one of the independent Member of ESG in his letter dated 28th October, 2013, will not give rise to cause of action. They argued that Garudeshwar Weir is the part and parcel of SSP and hence, no separate permission/EC was required for the same. They further argued that when lands of affected persons, including the Applicant No. 4, were acquired in 1991, there was knowledge available to them about project activity of Garudeshwar Weir. Therefore, even after counting period of five (5) years from 1991, the Application would not come within ambit of Section 15 of the NGT Act, 2010. They would submit that only Section 14 of the NGT Act, 2010, is applicable

for settlement of dispute when it is raised and Section 15 of the NGT Act, 2010, is restricted to grant of certain reliefs, which would follow if dispute is favourably decided in which victim(s) of pollution and other environmental damage arising under the enactments specified in Schedule-I, of the NGT Act, 2010, would apply for such a relief. The reliefs under Section 15 of the NGT Act, 2010, are discretionary and would depend upon settlement of environmental dispute. According to submissions of learned Additional Solicitor General Sh. Tushar Mehta and Sh. Maninder Singh, when there is bar of Section 14(1) of the NGT Act, 2010, and hence, the Application under Section 15 also cannot be entertained, because, Section 14 of the NGT Act, 2010, ought to be conjointly read for making purposive interpretation thereof.

23. Per contra, learned Advocate Sh. Mihir Desai, placed reliance on the observations in “**Aradhana Bhargav & Anr Vs MoEF and Ors (Application No.11 of 2013) (NGT-MANU/GT/0077/2013)**”. He further relied upon “**Kehar Singh vs State of Haryana, (Application No.124 of 2013)**” decided by Hon’ble Principal Bench of the National Green Tribunal, New Delhi.

In the given case, Applicant **Kehar Singh** alleged that establishing Sewage Treatment Plant (STP), at the site in question was in contravention of the EC Notification. He further alleged that in case the STP is located near the residential colonies, religious place and agricultural lands, it may cause adverse impact on environment, including bacterial diseases, fungus, parasites, increase in noise levels and visual problems. The Hon'ble Bench held that:

“the NGT has original jurisdiction in terms of Section 14 of the NGT Act, in relation to substantial question relating to environment or enforcement of legal rights relating to environment, when it arises from implementation of one or more of Acts specified in Schedule-I, of the NGT Act, 2010”.

It is also held that:

“16. ‘Cause of action’, therefore, must be read in conjunction with and should take colour from the expression ‘such dispute’. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. ‘Such dispute’ has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate

to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such

facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. (Refer: Rajasthan High Court Advocates Assn. V. Union of India [(2001) 2 SCC 294]; Sri Nasiruddin v. State Transport Appellate Tribunal and Ramai v. State of Uttar Pradesh [(1975) 2 SCC 671]; A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem [(1989) 2 SCC 163]; Bloom Dekor Limited v. Sujbhash Himatlal Desai and Ors. with Bloom Dekor Limited and Anr. v. Arvind B. Sheth and Ors. [(1994) 6 SCC 322]; Kunjan Nair Sivaraman Nair v. Narayanan Nair and Ors. [(2004) 3 SCC 277]; Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. [(2004) 8 SCC 100]; Liverpool and London S.P. and I. Asson Ltd. v. M.V. Sea Success I and Anr. [(2004) 9 SCC 512]; Prem Chand Vijay Kumar v. Yashpal Singh and Anr. [(2005) 4 SCC 417]; Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors. [(2006) 3 SCC 100])

17. *Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that*

those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, pre-requisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised.”

24. Learned Counsel Sh. Mihir Desai, seeks to rely upon “**Amit Maru vs The Secretary, MoEF and Ors. (M.A. No.65 of 2014 in Application No.13 of 2014)**.” This Tribunal held that: “ ‘cause of action’ for environmental dispute could ‘first arose’ when knowledge of violation of norms was gained and it is referable to the term of ‘such dispute’ as used in

Section 14(1) of the NGT Act, 2010". Thus, "there must exist substantial environmental dispute between the parties relating to enforcement of any act or legal right, available under Schedule-I, of the NGT Act, 2010, 'which dispute' ought to give rise to cause of action that had arisen for first time". It is contention of Sh. Mihir Desai, learned Advocate that in the instant case, when construction activity actually started in September, 2013, public members were alarmed and after enquiry they came to know about commencement of illegal project of Garudeshwar Weir. So, even if first cause of action is counted from September/October, 2013, the Application filed on 16.1.2014, is within period of limitation.

25. True, merits of the Applicants are not required to be considered at this stage. Still, however, *prima facie*, it would be essential to look into the Application to examine as to under which provisions, will it fall for the purpose of counting limitation.

26. Chapter-III of the NGT Act, 2010 deals with jurisdiction, powers and proceedings of the the Tribunal. We may reproduce relevant parts of Ss.

14,15, 16 and 18 of the NGT Act, 2010, for amplification of understanding the scope thereof. It would help us in interpreting purpose of these provisions placed under caption of Chapter-III, together.

Section 14 :

14. Tribunal to settle disputes: -- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environmental (including enforcement of any legal rights relating to environments), is involved and such question arises out of the implementation of the enactments specified in Schedule 1.

2) The Tribunal shall hear the disputes arising from the questions referred to in Sub-section (1) and settle such disputes and pass order thereon.

3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

Section 15:-

15. Relief, compensation and restitution:-

(1) The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in Clauses (a), (b) and (c) of Sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose;

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

Section 16:-

“16. Tribunal to have appellate jurisdiction.—any person aggrieved by,-

- (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);
- (i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);
- (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003);

may, within a period of thirty days from the date of which the order of decision or direction or determination is communicated to him prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

Section 18:-

18. Application or appeal to Tribunal:

(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by—

- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any person aggrieved, including any representative body or organization; or
- (f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 or any other law for the time being in force;

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application;

Provided further that the person, the owner, the legal representative, agent, representative body or organization shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organization have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

27. Coming to Sub-clause (3) of Section 15, it is manifest that any Application for grant of compensation or relief or restitution of property, or environment under Section, can be entertained by the Tribunal only if it is made within period of five (5) years from the date on which cause of action for such compensation or relief first arose. Here is the distinguishing line between Sub-Section (1) of Section 14 and Sub-section (3) of Section 15 of the NGT Act, 2010. While Section 14 (3) governs domain of “adjudication of dispute arising out of implementation of enactments specified in Schedule-I, or any substantial question relating to environment and then the limitation period would trigger from date on which cause of action for ‘such dispute’ arose first”. Sub-section (3) of Section 15,

relates to limitation period of five (5) years in respect of cause for such “compensation or relief” whatever it may be, first arose. There is much difference between process of adjudication of dispute and process of making provision for grant of relief or restitution of property/environment. In our opinion, Section 15 of the NGT Act, 2010, gives discretion to the Tribunal to provide for relief and compensation to victims of pollution, restitution of property damaged due to degradation of environment for such area etc. Needless to say, reliefs sought under Section 15, are not required to be mandatorily granted unless and until adjudication of dispute under Section 14, is completed. For example, compensation to victims of pollution cannot be contemplated unless and until the dispute regarding environmental question arising out of implementation of enactments specified in Schedule-I, or legal right pertaining to violation of mandate of environment is settled, which could show that such Applicant is victim of any violation of enactments specified in Schedule-I, of the NGT Act, 2010, or that it is clear case of an accident, admittedly being result of environmentally adverse impact. In other words,

Section 15, cannot be isolated from Section 14 and Section 18 of the NGT Act. All these provisions will have to be considered together.

28. Normally, it was unessential to give extracts of relevant provisions enumerated in Chapter-III of the NGT Act, 2010, which provide for legal remedies in relation to environmental issues, may be pertaining to enforcement of any right claimed for relief or compensation etc. We have, however, reproduced these provisions in order to highlight Section 18 (1) of the NGT Act, 2010.

Section 18(1) of the NGT Act, 2010, mandates that the Application must contain relevant particulars and be accompanied by such documents, if it is so filed under Ss. 14 and 15 or be it an Appeal under Section 16 of the said Act. Obviously, Section 18(1) of the NGT Act, 2010, mandates as to how and in what manner the Application either under Section 14 or 15 or an Appeal under Section 16, can be filed to the Tribunal. Sub-clause (2) of Section 18, is rather important for the purpose of interpretation of nature of remedy, which can be considered under any Application filed to the Tribunal. Sub-clause

(2) of Section 18, carves out an exception, because opening words used therein are “without prejudice to the provisions contained in Section 16”. It follows, therefore, that filing of Application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by a person, who falls within a particular category stated in Sub-clauses (a) to (f) and it does not provide for filing of any Application for restitution of environment for such area or areas, as per discretion of the Tribunal. In other words, though settlement of dispute under Section 14(1) by adjudication of cause of such “substantial question relating to environment” is permissible by filing Application under Section 14 read with Section 18(1) and 18(2), yet, such is not the case with Application under Section 15 (1) read with Section 18(2) of the NGT Act, 2010, at least to the extent of restitution of property damaged or for restitution of environment for such area or areas, as per discretion of the Tribunal. The Application under Section 15 read with Section 18, may be filed for relief or compensation to the victim of pollution and other environmental damages arising under the enactments specified in Schedule-I (including

accident occurred while handling of any hazardous substance), within period of five (5) years from the date of on which 'cause of action' for such compensation or relief, first arose. In such a case, the meaning to expression 'cause of action' will be rather restrictive, inasmuch as it has to be read with rider provided in Section itself; namely; "from the date on which cause for compensation or relief first arise". The cause for compensation, obviously, refers to the cause of incident, which could trigger from date of incident accident or accidental negligence arising out of spillage of hazardous substance or environmental damage, the victimization of pollution, which is result of violation of the enactments specified in Schedule-I, of the NGT Act, 2010. We cannot read anything more when the purposive interpretation of all the provisions, if considered together, is required to be considered. Otherwise, it may open floodgate to bygone litigations. For example; take a case of landslide which occurred somewhere in 2009 i.e. prior to commencement of the NGT Act and Application under Section 15 read with Section 18 of the NGT Act, 2010, and only relief for restitution of environment is sought by filing Application

under Section 15 can such case lie within purview of Section 15, of the NGT Act, only because an Applicant approaches the Tribunal with a case that he gathered information about landslide on basis of internal communication between the Meteorological Department and the Ministry concern, before four (4) years for filing the Application. In such a case, entire scenario of environment could have gone substantial change which is many a times difficult to trace out and, restitution thereof is a difficult task. The co-relation between Ss. 14,15 and Section 18(1) of the NGT Act, 2010, would make it amply clear that where a relief for grant of compensation or damages caused to the property or where death as a result from the breach of environmental Law occurs an Application containing all such particulars can be filed by the person or representative of the deceased, within period of five (5) years, on date of which 'cause of action' for such compensation or relief, first arose. This provision about five (5) years Limitation appears to be analogous to the Limitatio under provisions of Section 166 of the Motor Vehicles Act. So, date on which any incident which could have resulted into injury to a person, death of a person,

due to environmental damage, damage to property, or relief, which can be granted in terms of money due to an accident arising out of spillage, discharge of effluent of hazardous substance, or any kind of loss of fertility as a result of such of pollution, due to act of contravention of enactments specified under the Acts mentioned in Schedule-I, of the NGT Act, 2010, will be date of such incident and cannot be any other date of “knowledge regarding grant of project activity or, absence of Environment Impact Assessment (EIA)”. Those subject matters are covered by the “precautionary principle” which are to be taken into account before any project work has to be commenced. Changing of nature of such project work will, therefore, come within ambit of only and only Section 14(1) read with Section 18(1) of the NGT Act, 2010, because it requires “settlement of dispute relating to substantial question of environment”

(Emphasis supplied)

Therefore, first cause of action for filing of such Application would trigger from date of knowledge of the project activity which may smack of illegal acts undertaken by the Project Proponent (PP). Herein,

the Applicants referred to communication of Sh. Shekhar Singh, a Member of ESG, dated March 24th, 2013, addressed to the Chairman of ESG. So, they gathered knowledge at least on March 24th, 2013, that project of Garudeshwar Weir was being carried out by Gujarat Government at the site, probably without assessment of environmental impact by the ESG. They also knew that it was a Sub-Group working under the NCA.

29. Conjoint reading of both the above provisions would make it amply clear that adjudication of dispute relating to environment must be the first priority in case the Application comes within domain of Section 14(1). The National Green Tribunal can exercise its jurisdiction in case adjudication of dispute under Sub-clause (1) of Section 14, is made within a period of six (6) months from the date on which cause of action for such dispute first arose. Substantial question relating to environment involved in the instant Application, is allegedly date of construction of Garudeshwar Weir without full feasibility report and social as well as environment impact report, being submitted during course of construction and operation of Garudeshwar Weir, submitted to the

Environment Sub-Groups (ESG). The main thrust of Applicants is on the letter dated 24th March, 2013, written by Sh. Shekhar Singh, a Member of ESG. (Annex-5). Perusal of the letter dated March 24th, 2013, reveals that Sh. Shekhar Singh categorically stated that he had no knowledge whether comprehensive assessment of environment and social impact of Garudeshwar Weir and its contribution to cumulative impact of all the projects and activities in the area was done. He, however, stated that if it had been so done, he did not believe that same was put up to ESGs for its approval. Obviously, approval of ESG for the project of Garudeshwar Weir was thought necessary. According to perception of Sh. Shekhar Singh, the Committee directed Govt. of Gujarat (GoG) to take further follow up actions and, therefore, construction work of Garudeshwar Weir has been started.

30. At the cost of repetition, we may point out that the applicants have vaguely averred that they came to know about the impugned project being carried out without comprehensive assessment of environment and social impact by the ESG. They have not, however, made it clear, in any manner,

whatsoever, how the letter dated 26th October, 2013, sent by Sh. Shekhar Singh, a Member of ESG to the Chairperson of ESG, was accessible to them. It is vaguely stated that the date of knowledge of letter was in October, 2013. How come such knowledge regarding official communication between Sh. Shekhar Singh and the Chairperson of ESG, was gathered by the Applicants, is rather intriguing and the Applicants did not clarify this aspect of the matter. They did not seek such information by submitting any Application under the R.T.I. Act, 2005. The statement of Applicants that limitation commences only in October, 2013, is not only vague, but is totally unacceptable, having regard to the fact that the words “in October, 2013” are subsequently added in the typed script of the Application. The effort of Applicants *prima facie* appear to be somehow or other to bring the Application within six (6) months period, so that it would come within ambit of Section 14 of the NGT Act, 2010. At this juncture, it is pertinent to note that here also is some misconception in the mind of Applicants. The Applicants have come out with a case that they were alarmed when the construction activity was

noticed by them somewhere in September, 2013. They categorically stated in the Application “*it further appears that around March 2012, it was decided to award the contract to one M/s Ritwik Project Pvt. Ltd, Hyderabad for amount of Rs.299.43 Crores for Garudeshwar Weir*”. It is explicit from such statement in the Application that they were well aware that the project work was to commence and contract was awarded to M/s Ritwik Project Pvt. Ltd, Hyderabad in March, 2012. This knowledge has absolutely no co-relation with subsequent internal department communication between Sh. Shekhar Singh and the Chairperson of ESG of NCA. Furthermore, it is not case of the Applicants that they in any way concerned with decision of NCA, which is the concerned Authority to decide the issues ventilated through the present Application. In other words, the Applicants have made statements which are inconsistent with each other and moreover, the date of knowledge regarding so called illegal activity alleged by them, is imaginary and carved out to benefit the Application within socket of Section 14 of the NGT Act, 2010, somehow or the other.

31. Apart from what is stated above, there is no scintilla of evidence that the work was allotted in March, 2012, the executing agency took such a long time to start the actual construction activity at the site. This is rather improbable.

32. Now, there may be some room to say that word "Restitution" is used in Section 15 read with Section 18 of the NGT Act, 2010 with some connotation and meaning, though it is conspicuously absent in Section 18. We are aware that the Dictionary meaning of words "Restoration" and "Restitution" have semblance. Law Lexicon, (Dr. Shakil Ahmed Khan, 3rd Edition. 2012) defines expression "Restoration" and "Restitution" amends as follows:

RESTORATION, RESTITUTION, REPARATION, AMENDS.

"Restoration of property may be made by any one whether the person taking it or not: *restitution* is supposed to be made by him who has been guilty of the injustice. The dethronement of a king may be the work of one set of men, and his *restoration* that of another, but it is the bounden duty of every individual who has committed any sort of injustice to another to make *restitution* to the utmost of his power. "*Restoration*" and "*Restitution*" are both

employed in the sense of undoing that which has been done to the injury of another, but the former respects only injuries that affect the property, and *reparation* those which affect a person in various ways. He who is guilty of theft, or fraud, must make *restitution* by either restoring the stolen articles or its full value; he who robs another of his good name, or does any injury to his person, has it not in his power so easily to make *reparation*. The term *reparation* comprehends all kinds of injuries, particularly those of a serious nature, the word *amends* is applied only to matters of inferior importance”.

33. We are aware that this Tribunal is not bound by procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, as provided under Section 19(1) of the NGT Act, 2010. At the same time, Sub-Section (4) of Section 19, gives power to the Tribunal which indicate that the NGT has all trappings of ‘Civil Court’. The power to restitute a property under the Code of Civil Procedure, 1908, is provided under Section 144, which reads:

“Section 144

144. Application for Restoration.- (1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified]; and, for this purpose, the Court may make any orders, including orders for the refund, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order].

[Explanation]- For the purposes of sub-section (1) the expression “Court which passed the decree or order” shall be deemed to include—

(a) Where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) Where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) Where the Court of first instance has ceased to exist or has ceased to have jurisdiction to

execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

2. No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)".

Perusal of Section 144 of Civil Procedure Code, 1908, reveals that restitution depends upon final outcome of adjudicatory process. It would also depend upon any variance or subsequent orders passed in the Appeal. The adjudicatory process is, therefore, pre-condition, may be either interim adjudicatory process or final one, but prior to adjudication of dispute, the order for restitution in Application under Section 15 read with Section 18, in our opinion, per-se, may not be within legal domain, having regard to scheme of Chapter-III of the NGT Act, 2010.

34. Before we would consider necessity of approval of ESG of Narmada Control Authority (NCA), it will be appropriate to refer certain observations of the Apex Court in "**Narmada Bachao Andolan vs Union of India**". While

concluding the Apex Court gave direction No.6, as under:

“Even though there has been substantial compliance with conditions imposed under the EC, the NCA and ESG, will continue to monitor and ensure that all steps are taken not only to project but to restore and improve environment.”

(Emphasis by us)

35. It follows, therefore, that functions of NCA and ESGs were not restricted to protect and restore and improve environment only in the area covered by SSP. It appears that for such a reason Sh. Shekhar Singh, wrote letter to the Chairman of ESG of the NCA and to the Secretary of MoEF. Taking cue therefrom similar letter was addressed by the Applicant Nos.1 and 2 to the MoEF and Chief Secretary of GoG as well as the Chairman of Sardar Sarovar Narmada Nigam Limited (SSNNL).

36. In the context of commencement of date of limitation, which first arose, giving rise to cause of action, the Applicants are required to explain as to how and when it had arisen and as to how come the Application is within prescribed period of limitation.

37. Unless these issues are crystalized and determined, mere issue of approaching the Tribunal for the purpose of restitution which also is vaguely referred in the Application, would be rather impermissible. It need not be reiterated that the Applicant Nos. 2 and 3 and likewise affected land owners of whose lands have been acquired for Garudeshwar Weir project had already received the compensation. They fought litigation up to the High Court level and never raised any substantial question relating to environment, under Section 14(1) of the NGT Act, 2010, before filing of the present Application. They cannot claim restoration of lands, which are already vested in the Govt. somewhere in 1991, as a result of acquisition proceedings under the Land Acquisition Act, 1894. For, those lands vested in State of Gujarat, which became owner of those lands in the eye of Law. A special Notification under the Land Acquisition Act, 1894, was issued vide No. LAQ(BHAL)/36/87(P260) dated May 18th, 1987, by the Additional Collector, (Narmada) Vadodara. Perusal of said Notification clearly shows that a further Notification dated 24th April, 1987, was issued whereby it was informed to owners of the lands at village Garudeshwar, in

district Bharuch, that lands Survey Nos. 295, 296 and 298, for purpose of acquisition so as to cause alignment of an approach road to Garudeshwar Weir site were acquired. The project of Garudeshwar Weir was, therefore, within knowledge of the persons likely to be affected due to acquisition of their lands. They never raised environmental dispute of any kind before filing of the Application. The Land Acquisition Act, 1894, is also a special enactment. The NGT Act, 2010, came on statute-book after many years of enforcement of the Land Acquisition Act and also the event of acquisition of lands for project of Garudeshwar Weir. We mean to say, even assuming that the Applicants could have any reason to raise environmental dispute by filing the Application under Section 14 of the NGT Act, 2010, cause of action is attributable to them, when in or about due to allotment of the construction work to M/s Ritwik Construction Pvt. Ltd, in 2012, they were alarmed and upon enquiry came to know about commencement of illegal project of Garudeshwar Weir. Needless to say, starting point of cause of action ought to have been shown in the Application and taking a worst case and assuming that

illegality of the project of Garudeshwar Weir came to knowledge of the Applicants, in or about 2012, the Application ought to have been filed within six (6) months thereafter as required under Section 14(3) of the NGT Act, 2010. Instant Application filed on 16.1.2014, is, in any case, much beyond prescribed period of six (6) months from the date on which cause of action for raising environmental dispute had first arisen.

38. Reliance of the Applicants on certain observations in **Kehar Singh vs. State of Haryana** (Application No.124 of 2013), decided by Principal Bench of NGT at New Delhi, is misplaced. A Five Member Bench headed by **Hon'ble Chairperson (Hon'ble Sh. Justice Swatanter Kumar)** categorically observed that term "cause of action" has to be understood in contradistinction to the nature of form of a suit. It is further observed that in the restricted sense cause of action means the circumstances of forming infraction of right of immediate occasion for action.

39. In "**Aradhana Bhargav & Anr Vs MoEF and Ors**" (Application No.11 of 2013) a co-ordinate Bench of NGT, held that "a person who wishes to

invoke jurisdiction of the Tribunal or Court, has to be vigilant and conscious of his right and should not let the time to go by not taking appropriate steps. The principle of continuing cause of action is not applicable to the provisions of NGT Act, 2010”.

It is observed at the fag end of para-30

30. Equally so is the contention put forth by the applicants that the cause of action arose only on 04.11.2012, the date on which the applicants came to know about their right. Even assuming to be so, it cannot be countenanced in law. The application proceeds on the footing as if the applicants came to know about the project activities on 04.11.2012 when the applicant no. 2 was served with a letter on 05.11.2012. The above plea has to be negatived for more than one reason. The said letter dated 05.11.2012 by the Collector, Chhindwara to the applicant no. 2 marked as Exhibit A-1 reads as follows:

"Yesterday on 4th November, 2012, the Civil Work for the construction of the Dam in Bahnwada area of Chaurai Division. I received your letter dated 4th November, 2012 at the construction site. On points mentioned in the letter, I request that the construction of the dam in the Chhindwara District is being done by the State Administration for the benefit of the farmers. Water Resource Department has taken all the requisite permission for the implementation of the ambitious project. For your easy reference and perusal the copies of the letters received from the department is being made available with this letter....."

Nowhere ii is stated in the letter that construction work commenced on 4th-5th November, 2012. From the reading of the letter, it would be quite

clear that it was a reply to a letter given by the applicant no. 2 to the Collector, Chhindwara at the dam site. On query as to the non-production of the letter of applicant no. 2, a copy of the letter was produced at the time of arguments. The letter of applicant no. 2 would clearly indicate that the agitation in respect of the dam project was going on for a period of more than seven years. Admittedly, out of 5 applicants, a few are the residents of that area where the project was undertaken and the lands of a few of the applicants were also acquired by the State for the said purpose and proceedings in respect of the acquisition was pending from the time of acquisition in 1990. Under such circumstances, it would be futile on the part of the applicants to say that they came to know about the project and all necessary particulars thereon only from 05.11.2012, the date of reply by the Collector, Chhindwara."

40. There is basic difference between substantive provision in the section of the Act, which specifies particular limitation and excludes provisions of the Limitation Act, 1963 and Rules of the Code of Civil Procedure. As stated before, the concept of 'extent of limitatoin' under the Limitation Act, 1963, is inapplicable to provisions of the NGT Act, 2010, inasmuch as it is a special statute. In **"Chhatisgarh State Electricity Board Vrs. Central Electricity Regulatory Authority and Ors (2010)5, S.C.C. 23"**, the Apex Court considered Section 125 of the Electricity Act 2003, along with Proviso appended thereto. The Apex Court held that *"limitation period provided under section 125*

is of 60 days and could be extended up to 60 days under Proviso to Section 125 but there is no provision in the said Act for extension beyond this period". It is held that "the Electricity Act is a special legislation which is excluded from purview of the Limitation Act, 1963 by virtue of Section 29 (2) of the Limitation Act and, therefore, Section 5 of the Limitation Act, cannot be invoked in relation to proceedings of the special enactment". It is, therefore. Obvious that this Tribunal has no power to extend period of limitation.

41. In "Gram Ppanchayat Tiroda & Anr vs MoEF & ors". This Bench also took similar view. The period of limitation of five (5) years will be available if the Application can be considered under Section 15(3) of the NGT Act, 2010. In our opinion, for filing of such Application under Sub-Clause (3) of Section 15, cause of action for compensation or relief will have to be read with Sub-clauses (4) and (5) of Section 15.

42. Initially, we were reluctant to take up the issue of Limitation and other issues for consideration. The question of limitation is a mixed question of facts and Law and ordinarily it has to be determined only when facts are very clear. Else, such an issue should not be taken up for decision at the outset. It is

pointed out by learned Additional Solicitor Generals, appearing for the Respondent No.1 that in case of “**Arun Agarwal vs Nagrika Exports (P) Ltd& Ors** (2002) 10, SCC 101, (2) **K. Sagar vs A. Bala Reddy & Anr** (2008) 7, SC 166 and (3) **M/s Reliance Infocom Ltd vs BSNL**” CM 1831/2005 in FAO (OS) 232/2004, the issue is thrashed out. In Reliance Info Co. Ltd. Vs BSNL, by order dated February 10th, 2005, the Hon’ble Delhi High Court held that “*it would decide the issue of jurisdiction/maintainability along with merits of the case*”. That order was challenged before the Apex Court. The Apex Court by Judgment dated 7.7.2006, CA, 2930, 2006 (**BSNL Vs Reliance Infocom Ltd**) was pleased to set aside the order of Hon’ble Delhi High Court. It has been held that “*such preliminary issue, shall be decided first, if it can be demonstrated that such preliminary decision would be essential in the facts and circumstances of the given case*”.

43. Perusal of the reliefs sought by the Applicants clearly indicate that mainly they seek injunction against commencement of construction work of Garudeshwar Weir. The prayers in the Application, thus, mainly purport to show that stoppage of any further construction in Garudeshwar Weir, is the main object (Prayer) of Application. The Applicants

incidentally say that actions may be taken against the officers, who have committed defaults in going ahead with construction work without following due compliance of the Environment (Protection) Act, 1986 and ESG and RSG of NCA before allowing commencement of construction. Obviously, grievance of the Applicants is that Clearance of the Environmental Sub Group (ESG) and NCA was essential before the construction work of Garudeshwar Weir could be commenced. In other words, the Applicants meekly surrendered to the authority of ESG as the proper authority to assess and approve downstream project of Garudeshwar Weir (G.W). It is *ipse-dixit* that communication of Sh. Shekhar Singh dated March 24th, 2013, addressed to Chairman Dr. V. Rajgopalan of ESG, gave them due alarm note. As a matter of fact, said communication was not placed in public domain. It was internal communication between the Members of ESG. We don't know as to how the Applicants could have access to the said communication and on basis thereof how could they affirm that there was no Clearance from ESG.

44. At this juncture, it would be appropriate to notice that meaning of expression 'Dam and Water

Works' is set out and considered in depth in case of **State of Andhra Pradesh vs. State of Maharashtra and Ors. (2013) 5 SCC 68**. The Apex Court observed as follows;

51.1. The same book with reference to Colwell v. May's Landing Water Power Co. 19. N.J.Eq. (4 C.E.Green) 245, 248, explains the word "dam" as follows:

The word "dam" is used in two different senses.

It properly means a structure raised to obstruct the flow of water in a river, but by well-settled usage it is often applied to designate the pond of water created by its obstruction. The word is used in this conventional sense in some statutes, and it is evidently used in this sense in a statute giving power to raise the "dam and water-works" to a height mentioned.

51.2. In the Indian Standard Glossary of Terms Relating to River Valley Projects, Part B, Dams and Dam Sections [First Revision], paragraph 2.27 explains "dam" as follows:

A barrier constructed across a river or natural watercourse for the purpose of: (a) impounding water or creating reservoir; (b) diverting water there from into a conduit or channel for power generation and or irrigation

purpose; (c) creating a head which can be used for generation of power; (d) improving river navigability; (e) retention of debris; (f) flood control; (g) domestic, municipal and industries; (h) preservation of wildlife and pisciculture, (j) recreation etc.

51.3. Glossary of irrigation and Hydro-Electric Terms and Standards Notations used in India, Third Edition, published by Central Board of Irrigation and Power, explains “dam” as under:

Dam: A structure erected to impound water in a reservoir or to create hydraulic head.

51.4. “Reservoir” is defined in the said publication as follows:

Reservoir: A pond, lake, or basin, either natural or artificial, for the storage, Regulation and control of water.

51.5. “Introduction to dams”, Publication No.220 by Central Board of Irrigation and Power under the Chapter “Dam Sites – Large Dams” with reference to book by J. Cotillon explains the position with regard to dam sites as under:

A dam is a structure meant to retain water. Only hydraulic dams are dealt with in this paper; when

it is question of other dams, it will be specified “Talling dam”, “industrial waste dam”.

1. Generally, this retention takes place in a natural dispersions. But it can also take place in an artificial enclosure created, for instance, by embankments set-up along the banks of a river.

Moreover, the enclosure can be fully artificial; this is the case of a basin filled by pumping, created on a plateau and closed by a ring embankment, in this case, we speak about an “embankment” rather than about a “dam”.

2. Generally, the dam is set-up on a river.

But it can be constructed in a dead valley where only a trickle of water flows; the reservoir is then filled by pumping and/or by gravity diversions.

It can also close a pass on the perimeter of a reservoir, it is then called “secondary dam” as opposed to “main dam” which closes the natural depression (living valley or dead valley).

3. The dam retains generally the upstream water, its purpose may be also to retain the downstream water for a few hours. That is, an exceptional tidal wave (anti-storm dam).

45. Along with affidavit of Applicant No.2 – Rohit, communication dated June 12th, 2014, (Annex-A) issued by R & R ESG of NCA, is placed on record. It appears that decision was taken in the Meeting dated June 27th, 2013, that phase-I proposal tilted as “construction of spillway Piers to full; Height and Bridge and Installation of Gates to be kept in raised position”, was approved by SJ &-E and the Chairman of R&R Sub Group of NCA. So also, communication dated March 29/30 1984, (Annex-D) filed along with affidavit of Rohit Prajapati -Applicant No.2, reveals that Sardar Sarovar Construction Advisory Committee (SSCAC), (Govt. of India, Ministry of Irrigation) granted specific approval to Garudeshwar Weir in following way:

iv) A tail-pool dam located at Garudeshwar Weir about 12.0Km downstream of Sardar Sarovar Dam with a live of storage capacity of 34.36 Moum (27857 Acft) between pond level + 33.15m (103.7ft) and +27.33m (+89.6ft). The recommendation was communicated to

all the concern authorities. The acquisition of lands was started in 1991.

46. The Applicants, in fact, pleaded in the Application- para V(b) and para V(l), which shows that Garudeshwar Weir is a power component of Sardar Sarovar Project (SSP) and they were aware about litigation pertaining to entire project, which was taken up to the Apex Court. It would not be out of place to reproduce certain averments from the pleadings, before the Apex Court in a Petition that was filed in the Writ Petition (Civil) No.314 of 1994 (**Narmada Bachao Andolan**) case.

“Far from preparing a master plan for resettlement and rehabilitation within two years from the Tribunal’s award i.e. by 1981, the authorities had still not been able to prepare such a master plan. Till today, the authorities are unaware of even the approximate number of persons who are going to be affected by the reservoir alone and have not done any proper survey to determine the number of persons who will be affected by other project related works such as canal, colony, Garudeshwar Weir (in the downstream meant for pumping back water at night after power generation), compensatory afforestation etc.

47. The pleadings which are reproduced above go to show that Garudeshwar Weir was considered as part and parcel of SSP. It was known to all concern persons when Garudeshwar Weir in the downstream

was meant for pumping back water at night, after power generation, compensatory afforestation etc. Thus, the very purpose of Garudeshwar Weir was to utilize the storage capacity of reservoir as a pumping station to provide water, which could be pumped back in the night time, for power generation. One of the prayers in that Writ Petition (**Narmada Bachao Andolan**) case was thus:

“To appoint independent members and representatives from outies organizations of statutory bodies like NCA, Sardar Sarovar Construction Advisory Committee (SSCAC) and Environmental Sub Group (ESG) etc.”

48. It is interesting to note that before Environment Impact Assessment (EIA) Notification dated September 14, 2006, the procedure was different in various respects. There was first EIA Notification, 1992, issued on 29.1.1992. The Notification of 1992 was followed by Environment Impact Assessment (EIA) Notification, 1994 that was further followed by Explanatory Note, regarding Environment Impact Assessment (EIA) Notification, 1992. Until 1994, however, EC from the Central Govt. was only of Administrative decision. It lacked

legislative support and did not mandate any kind of Environment Impact Assessment (EIA), as such. It is but natural that when SSP was in contemplation along with ancillary projects like Garudeshwar Weir only administrative decision could suffice the purpose, prior to 1994.

49. Sum and substance of discussion made above is that instant Application falls only within ambit of Section 14(1) of the NGT Act, 2010 and as such it is barred by limitation.

Point No. (iii) :

Whether the Original Application is maintainable at the instance of the Applicant or liable to be dismissed, due to absence of 'locus standi'?

50. It is submitted on behalf of the Respondent Nos.1 and 2 that the Applicant Nos.1 to 4, have no '*locus standi*' to file instant Application. Chief bone of their argument is that the Applicant No.4, has received compensation, when his land was acquired and as such, he is beneficiary of the project in question. Therefore, now, he cannot turn back and challenge Garudeshwar Weir project, when he has accepted compensation, challenged land acquisition

Award and also gained more compensation in the Appeal- proceedings before the Hon'ble High Court. The Applicant No.4, alone may be debarred from filing the Application on such a ground, in case, the Application is to be considered as covered under Section 15 of the NGT Act, 2010. For comparative purpose, the Applicant Nos. 1 and 2 were not required to file any Application before they noticed illegality of the alleged construction. In case of **Goa Foundation and Ors Vs. Union of India & Ors** (M.A.No.49 of 2013 in Application No.26 of 2012) Principal Bench of NGT, New Delhi headed by **Hon'ble Sh.Justice Swatanter Kumar**, observed:

25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's The Law Lexicon supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative,

he is a person aggrieved' [Ebrahim Aboodbakar v. Custodian General of Evacue Property, AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the case of Bar Council of Maharashtra v. M.V. Dabholkar and Others AIR 1976 SC 242 held as under:-

"**27.** Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning

in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

28. The pertinent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the

advocates as well as the purity and dignity of the profession.

40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere case, there is no breach of a rule of natural justice.

The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and, if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably

clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order.”

51. In order to keep judicial propriety and discipline, we deem it proper to go by logic enumerated above in dictum of Goa Foundation case. So, it goes without saying that the Applicant Nos. 1 to 3, may not be persons directly affected by Garudeshwar Weir project. It supposes that they have “interest in environment and desire to maintain required standard of environment in the area”. Such persons can ventilate grievances by filing Application under Section 14(1), in view of Section 2(h) as well as 2(j) of the NGT Act, 2010. The expression ‘aggrieved person’ is not restricted to person, who is entitled to appeal against any adverse order, but a term used in

juristic sense. Hence, objection regarding maintainability of the Application for want of '*locus standi*' of the Applicants, is rejected.

Point No. (iv) :

Whether the Application is barred by principle of Res-judicata and, as such, is not maintainable in view of the principle underlying Explanation-IV of Section 11 of the Code of Civil Procedure, 1908:

52. As far as objections pertaining to bar of 'Res-judicata' is concerned, Learned Additional Solicitor General Sh. Maninder Singh vehemently argued that the provisions of Section 11 of Explanation IV and Explanation VI of the Code of Civil Procedure, debar the Applicants to file instant Application, when issues were decided by the Apex Court in the earlier Public Interest Litigation (PIL), initiated by a group of persons, who opposed SSP. The issue regarding environmental impact on downstream project, which is part and parcel of the SSP, cannot be reinvestigated or re-agitated at the instance of any other persons, only for the reason that such persons are group comprising of those persons, interested in the project of Garudeshwar Weir, were not parties to the earlier litigation. He vehemently argued that filing

of instant Application by Mr. Lakhan Musafir and others, is no short of 'abuse of process of Court' and, as such, the main Application filed by latter group deserves outright dismissal at the threshold. He mainly seeks to rely upon certain observations in the case of "**State of Karnataka Vs All India Manufactures Organization & Ors**" (2006) 4, SCC, **683**, particularly, which are set out in paragraphs 32 to 40 thereof.

Res Judicata

".....32. Res Judicata Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* (P. Ramannatha Aiyer, Advanced Law Lexicon (Vol3 3rd Edn. 2005) at p.3170) ("No one ought to be twice vexed for one and the same cause") and second, public policy that there ought to be an end to the same litigation. (Mulla, Code of Civil Procedure (Vol.1, 15th Edn, 1995) at p.94. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "the CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the Section is not to be considered exhaustive of the general principle of law. (See, Kalipada De v. Dwijapada Das) The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. Section 11 of the CPC recognizes this principle and forbids a court

from trying any suit or issue, which is res judicata, recognizing both 'cause of action estoppel' and 'issue estoppel'. There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to Public Interest Litigations and second, whether the issues and findings in Somashekar Reddy constitute res judicata for the present litigation.

33. Explanation VI to Section 11 states:

"Explanation VI. Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

34. Explanation VI came up for consideration before this Court in [Forward Construction Co. and Ors. v. Prabhat Mandal \(Regd.\)](#). (Hereinafter "Forward Construction Co."). This Court held that in view of Explanation VI, it could not be disputed that Section 11 applies to Public Interest Litigation, as long as it is shown that the previous litigation was in public interest and not by way of private grievance. (Ibid at pp. 112-113 (paragraph 21) further, the previous litigation has to be a bona fide litigation in respect of a right which is common and is agitated in common with others. (Id)

35. As a matter of fact, in a Public Interest Litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous Public Interest Litigation would be a judgment in

rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised/should have been raised on an earlier occasion by way of a Public Interest Litigation. It cannot be doubted that the petitioner in Somashekar Reddy (supra) was acting bona fide. Further, we may note that, as a retired Chief Engineer, Somashekar Reddy had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, we are satisfied in principle that Somashekar Reddy(supra) , as a Public Interest Litigation, could bar the present litigation.

36. We will presently consider whether the issues and findings in Somashekar Reddy (supra) actually constitute res judicata for the present litigation. Section 11 of the CPC undoubtedly provides that only those matters that were "directly and substantially in issue" in the previous proceeding will constitute res judicata in the subsequent proceeding. Explanation III to Section 11 provides that for an issue to be res judicata it should have been raised by one party and expressly denied by the other:

Explanation III to Section 11 provides that for an issue to be res judicata it should have been raised by one party and expressly denied by the other: "Explanation III. The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other."

37. Further, Explanation IV to Section 11, states:

"**Explanation IV.** Any matter which might and ought to have been made ground defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

38. The spirit behind Explanation IV is brought out in the pithy words of Wigram, V.C. in [Henderson v. Henderson](#) (All ER pp.381 I-382A) as follows:

"The plea of res judicata applies, except in special case (sic), not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." (Ibid. at pp.381-382).

39. In *Greenhalgh v. Mallard* (hereinafter "Greenhalgh"), Somervell L.J. observed thus:

"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the Court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them."
(Ibid. at p.257)

40. The judgment in *Greenhalgh* (supra) was approvingly referred to by this Court in [State of U.P. v. Nawab Hussain](#) . Combining all these principles, a

Constitution Bench of this Court in [Direct Recruit, Class II Engineering Officers' Association v. State of Maharashtra](#) expounded on the principle laid down in *Forward Construction Co. (supra)* by holding that:

"An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had (sic) decided as incidental to or essentially connected with (sic) subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata. (Ibid. at .741 (paragraph 35) , per LM Sharma, J.) “

53. Learned Additional Solicitor General, Sh. Maninder Singh would submit, therefore, that though issue of Garudeshwar Weir was not separately and specifically referred to or mentioned being a component of SSP while delivering Judgment in case of ***Narmada Bachao Andolan***, by the Apex Court, yet, it cannot be overlooked that estimated cost of Garudeshwar Weir was included by the Planning Commission of India (PCI), in 1988, while

approving total estimated cost of SSP and moreover, there is reference to Garudeshwar Weir in the Judgment of the Apex Court, which impliedly goes to show consideration of such a project as part and parcel of SSP. Thus, it is vehemently argued that when during pendency of PIL before the Apex Court in ***Narmada Bachao Andolan*** case, group of the Applicants (Lakhan Musafir & Ors) never agitated issues pertaining to Garudeshwar Weir and environmental impact of SSP, vis-à-vis Garudeshwar Weir, nor it was conveyed before the Apex Court that Garudeshwar Weir, is a separate component and is not part of SSP, the original Applicants cannot be permitted now to raise such issues, inasmuch as the Judgment of the Apex Court in ***Narmada Bachao Andolan*** case. Learned Additional Solicitor General Sh. Maninder Singh also seeks to rely upon certain observations in the case of ***M. Nagbhusana vs State of Kerala & Ors*** (2011) 3, SCC 408 and ***State of Tamil Nadu Vs State of Kerala & Ors*** (2014) 12 SCC 696.

54. We are called upon to consider the principle of “Public Trust doctrine” and “Precautionary Principle”. The Apex Court held that: “*Principle of Public Trust Doctrine has no application in the context of safety*”.

The Apex Court observed: “the contesting party, by applying ‘public trust doctrine’ or ‘precautionary measure’ cannot through legislation do an act in conflict with the judgment of the highest Court which has attained finality. If a legislation is found to have breached the established constitutional limitation such as separation of powers, it has to go and cannot be allowed to remain. It is true that the State’s sovereign interests provide the foundation of the public trust doctrine but the judicial function is also a very important sovereign function of the State and the foundation of the rule of law. The legislature cannot by invoking “public trust doctrine” or “precautionary principle” indirectly control the action of the courts and directly or indirectly set aside the authoritative and binding finding of fact by the Court, particularly, in situations where the executive branch (Government of the State) was a party in the litigation and the final judgment was delivered after hearing them.”

55. No doubt, the Apex Court further observed that “Rule of Res-judicata is not merely technical Rule, but is based on high public policy”. Much emphasis was led on observations in Paragraphs 168,170,174 and 175 of the Judgment in **State of Tamil Nadu Vs State of Kerala** (supra). For ready reference, these paragraphs may be quoted as follows:

168. Nanak Singh has been followed by a three Judge Bench of this Court in Bua Das Kaushal. In our view, the rule of res judicata which is founded on public policy prevents not only a new decision in the subsequent suit but also prevents new investigation. It prevents the defendant from setting up a plea in a subsequent suit which was decided between the parties in the previous proceedings. The legal position with regard to rule of res judicata is fairly well-settled that the decision on a matter in controversy in writ proceeding ([Article 226](#) or [Article 32](#) of the Constitution) operates as res judicata in subsequent suit on the same matters in controversy between the same parties. For the applicability of rule of res judicata it is not necessary that the decision in the previous suit must be the decision in the suit so as to operate as res judicata in a subsequent suit. A decision in previous proceeding, like under [Article 32](#) or [Article 226](#) of the Constitution, which is not a suit, will be binding on the parties in the subsequent suit on the principle of res judicata.

170. In light of the above legal position, if the 2006 judgment is seen, it becomes apparent that after considering the contentions of the parties and examining the reports of Expert Committee, this Court posed the issue for determination about the safety of the dam to increase the water level to 142 ft. and came to a categorical finding that the dam was safe for raising the water level to 142 ft. and, accordingly, in the concluding paragraph the Court disposed of the writ petition and the connected

matters by permitting the water level of Mullaperiyar dam being raised to 142 ft. and also permitted further strengthening of the dam as per the report of the Expert Committee appointed by the CWC. The review petition filed against the said decision was dismissed by this Court on 27.7.2006. The 2006 judgment having become final and binding, the issues decided in the said proceedings definitely operate as res judicata in the suit filed under [Article 131](#) of the Constitution.

174. The rule of res judicata is articulated in [Section 11 of the Code](#) of Civil Procedure.

175. Explanations VII and VIII were inserted in the above provision by Code of Civil Procedure (Amendment) Act, 1976 w.e.f. 1.2.1977. Explanation VIII in this regard is quite relevant. The principles of res judicata, thus, have been made applicable to cases which are tried by Courts of limited jurisdiction. The decisions of the Courts of limited jurisdiction, insofar as such decisions are within the competence of the Courts of limited jurisdiction, operate as res judicata in a subsequent suit, although, the Court of limited jurisdiction that decided the previous suit may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. If a decision of the Court of limited jurisdiction, which was within its competence, operates as res judicata in a subsequent suit even when the subsequent suit is not triable by

it, a fortiori, the decision of the highest Court of the land in whatever jurisdiction given on an issue which was directly raised, considered and decided must operate as res judicata in the subsequent suit triable exclusively by the highest Court under [Article 131](#) of the Constitution. Any other view in this regard will be inconsistent with the high public policy and rule of law. The judgment of this Court directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question before this Court, though, label of jurisdiction is different.

56. We do not find it essential to discuss elaborately third case law cited by learned Additional Solicitor General, which, of course, is in keeping with same line of observations, which are in case of **State of Karnataka Vs All India Manufactures Organization & Ors**". There cannot be duality of opinion that the principle of "Constructive Res-judicata" would be applicable when any issue which is 'directly and substantially' involved in earlier litigation, is not agitated though could have been so pleaded/agitated and decision in the earlier litigation is rendered on such issue. A careful reading of observations in **State of Tamil Nadu Vs State of Kerala**, go to show that the principles of 'Res judicata' is made applicable to cases, which are tried by the Courts of limited jurisdiction. The plea of Res-

judicata cannot be considered in isolation and in generality as such, this is procedural defence, which ordinarily, is applicable when the issue is same and is decided by the Court, having same kind of jurisdiction, or, jurisdiction of higher level and identity of the parties is of similar nature. Obviously, there must be semblance of the parties, the issue of jurisdiction before embargo is to be directly or impliedly placed by invoking such defence under Section 11 of Explanation IV or VI of the Code of Civil Procedure, 1908. Admittedly, the present Applicants were not parties before the Apex Court in **Narmada Bachao Andolan** case. We have perused pleadings in the PIL Writ Petition No.319 of 1994, filed in the matter of **Narmada Bachao Andolan** case. The pleadings in the petition of said PIL, do not refer to issue of Garudeshwar Weir and Environmental Impact Assessment (EIA) thereof. The only statement made in paragraph 15, of the said petition is as follows:

“far from preparing a master plan for resettlement and rehabilitation within two (2) years from the Tribunal Award by 1981, the authorities had still not been able to prepare such master plan till today. The authorities are unaware of even the approximate number of persons, who are going to be affected by

the reservoir alone and have not done any proper survey to determine the number of persons, who will be affected by other project related work, such as Canal, Colony, Garudeshwar Weir, if in the downstream meant for pumping back the water at night after power generation, compensatory afforestation etc.”

In the earlier pleadings, it was only stated that

“there is no figure available as to how many families will be adversely affected by other national park and sanctuary proposals connected with this project, Garudeshwar Weir to be built downstream of SSP and other such necessary parts of the project”.

57. The prayers in that PIL Writ Petition were to issue Writ of Mandamus for stoppage of construction of SSP to appoint an independent body for implementation of R & R programme and to constitute appropriate NCA. It does not appear that specific issue regarding construction of Garudeshwar Weir, without EIA was raised in that petition. Mere fact that certain lands were acquired for implementation of Garudeshwar Weir will not by itself amount to raising of such an issue in the earlier litigation and any particular finding of the Apex Court in case of **Narmada Bachao Andolan**, notwithstanding certain **Obiter Dictas** which are referred by learned Additional Solicitor General Sh. Maninder Singh. It is pertinent to note that purpose

of Garudeshwar Weir is to pump water by pumping the same to the main reservoir of SSP during night hours for power generation and affected villages are only within State of Gujarat. The cost of Garudeshwar Weir was not to be shared by three States i.e. Madhya Pradesh, Maharashtra and Gujarat, as per proposal of SSP, which was approved by the Planning Commission of India. It, therefore, appears that estimates for both the projects were prepared exclusive for each project and not comprehensively as such.

58. Be that may as it is, it is not necessary to examine whether Garudeshwar Weir is part and parcel of SSP and, therefore, it separately requires EIA. This aspect may need examination on merits of the case. We are not supposed to enter into thicket of merits of the case on facts and above observations are only *prima facie* observations to show that the issue of Garudeshwar Weir was not directly and substantially the same, which was before the Apex Court in **Narmada Bachao Andolan** case.

59. In our opinion, Rule of 'Constructive Res judicata' in the facts and circumstances of the present case, would depend upon close examination of the facts on which findings will have to be rendered

before we would be able to deal with such preliminary question. In our opinion, if the issue requires 'construction' for the purpose of applicability of Rule of Res-judicata and that too on consideration of facts of a particular case, such issue should not be decided as a preliminary one. In **Ramesh Desai and Ors Vs Bipin Vadilal Mehta 2006 (5) SCC 638** the Apex Court held that "*mixed question of fact and law, cannot be determined as preliminary issue*". It is observed that "*where a decision on issue of law depends on facts, there it cannot be tried as preliminary issue*". In the given case, it was held that "question of limitation in the particular facts and circumstances of that case was mixed question of fact and law and, therefore, it was improper to decide the same as a preliminary issue".

60. The issues pertaining to environment are flexible. There cannot be strict embargo in respect of environmental issues, inasmuch as juxta position would go on changing due to lapse of time. For example; the forest land available at the time of commencement of project activity may be reduced to large extent at the time of its implementation after the EC. There may be a case where due to afforestation the forest canopy density would be more

than what was available at the time of EC as compared to that of the earlier. In other words, environmental issues are not static and decision may not be binding on the same parties if the issues are directly involved in the earlier litigation with different identity on findings of such issues.

61. In so far as powers of the National Green Tribunal are concerned, it may be mentioned that Section 19 of the NGT Act, 2010, give leverage to this Tribunal to mould/regulate its own procedure and makes it clear that it should not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice.

62. The words “shall not be bound” as used in Section 19(1) clearly indicate the intention of legislature in unambiguous words. The legislative mandate reveals that this Tribunal is not required to be under binding procedural Rules of the Code of Civil Procedure, 1908. The Apex Court in **V. Purushottam Rao Vs Union of India (2001) 10, SCC, 305** held that “*issue of ‘constructive Res judicata’ is excluded when the Code of Civil Procedure is not applicable to the proceedings under Article 226 of the Constitution, in view of Explanation appended to Section 141 of the Code of Civil*

Procedure". Therefore, it is held that Code of Civil Procedure is not required to be followed in a proceeding under Article 226, unless the High Court itself has made provisions of Civil Procedure Code, applicable to the proceedings under Article 226 of the Constitution. The Court further noted that "*the provisions of Section 11 as well as Order 2, Rule 2 of the Code of Civil Procedure, contemplate adversarial system of litigation where Court adjudicates the rights of the parties and determines issues arising in a given case*". The Public Interest Litigation (PIL), filed for ensuring interest of public, cannot be held to be an adversarial system of adjudication. Similarly, the Apex Court in **Rural Litigation Entitlement Kendra vs. State of U.P. 1989 SUPP (1) SSC 504,** declined to Rule of 'Constructive Res judicata' to a PIL raising issues of public importance on the grounds that a PIL, the disputes raised were not of interested parties and that 'Constructive Res judicata' is a technical defence which could not preclude determination of said matter. The Apex Court further observed that

"even though, an earlier order could be treated as final one, then also in the dispute like PIL, it would be difficult to entertain 'plea of Res-judicata' "

(Emphasis supplied by us)

63. Considering the legal position discussed hereinabove, we are of the opinion that contentions of learned Additional Solicitor General Sh. Maninder Singh, are unacceptable. We do not accept the objections raised by the Respondent Nos.1 and 2 that the Application is barred by the principles of 'Constructive Res judicata' as envisaged under Section 11, Explanation IV and VI of the Code of Civil Procedure, 1908. The objection of such technical defence is, therefore, overruled.

64. In the result, the Misc. Application is allowed. We hold that the main Application No.10 of 2014, is barred by limitation. Hence, the Misc. Application is allowed and Application No.10 of 2014, is dismissed. No costs.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay A. Deshpande)

DATE: 1st SEPTEMBER, 2015.

PUNE.

hkk

T.C.

Shingra

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL DIARY NO. (S) .9144 OF 2015

LAKHAN MUSAFIR AND ORS

Appellant(s)

VERSUS

SARDAR SAROVAR NARMADA NIGAM LTD AND ORS

Respondent(s)

O R D E R

Heard.

Delay condoned.

We see no reason to interfere with order dated 1st September, 2015 passed by the National Green Tribunal (Western Zone) Bench, Pune.

The civil appeal is accordingly dismissed.

Applications, if any, shall also stand disposed off.

.....CJI.
(T.S. THAKUR)

.....J.
(UDAY UMESH LALIT)

NEW DELHI
DATED 19th APRIL, 2016.

T.C.



S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Diary No(s).9144 of 2016

LAKHAN MUSAFIR AND ORS

Appellant(s)

VERSUS

SARDAR SAROVAR NARMADA NIGAM LTD AND ORS

Respondent(s)

(With appln.(s) for condonation of delay in filing appeal)

Date : 19/04/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Shodhika Sharma, Adv.
Mr. Satya Mitra, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard.

Delay condoned.

We see no reason to interfere with order dated 1st September, 2015 passed by the National Green Tribunal (Western Zone) Bench, Pune.

The civil appeal is accordingly dismissed.

Applications, if any, shall also stand disposed off.

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)

T.C.





भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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NEW DELHI, TUESDAY, MARCH 14, 2017/PHALGUNA 23, 1938

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 14 मार्च, 2017

का.आ. 804(अ).—पर्यावरण (संरक्षण) नियम 1986 के नियम 5 के उपनियम (3) की अपेक्षानुसार, पर्यावरण (संरक्षण) अधिनियम 1986 (1986 का 29) की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) के अधीन भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii) में अधिसूचना सं. का.आ. 1705(अ) तारीख 10 मई, 2016, पर्यावरणीय अनापत्ति के निदेश निबंधनों को अनुदत्त करने के लिए परियोजनाओं के मूल्यांकन की प्रक्रिया को पूरा करने के लिए, जिनमें स्थल पर कार्य आरंभ कर दिया है, पर्यावरणीय अनापत्ति की सीमा से परे उत्पादन का विस्तार किया है या पर्यावरण संघात अधिसूचना 2006 के अधीन पूर्व पर्यावरण अनापत्ति अभिप्राप्त किए बिना उत्पाद मिश्रण में परिवर्तन किया है, द्वारा उन सभी व्यक्तियों से, जिनके उससे प्रभावित होने की संभावना थी, उस तारीख से जिसको उस राजपत्र की प्रतियां, जिसमें यह अधिसूचना अंतर्विष्ट है, उपलब्ध करा दी जाती हैं, साठ दिन की अवधि के भीतर आक्षेप और सुझाव आमंत्रित करते हुए एक प्रारूप अधिसूचना प्रकाशित की गई थी ;

2. और उक्त राजपत्र की प्रतियां जनता को 10 मई, 2016 को उपलब्ध करा दी गई थीं ;
3. और पूर्वोक्त वर्णित प्रारूप अधिसूचना पर प्राप्त सभी सुझावों या आक्षेपों पर केंद्रीय सरकार द्वारा सम्यक्तः विचार कर लिया गया है ;
4. पर्यावरण (संरक्षण) अधिनियम, 1986 के उपबंधों के अधधीन, अधिनियम की धारा 3 की उपधारा (1) के अधीन केंद्रीय सरकार को ऐसे सभी उपाय करने की शक्ति है, जो वह पर्यावरण की क्वालिटी के संरक्षण और सुधार तथा पर्यावरण प्रदूषण को रोकने, नियंत्रित करने और समाप्त करने के प्रयोजनों के लिए आवश्यक और समीचीन समझती है ;
5. पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 5 केंद्रीय सरकार को निदेश देने के लिए सशक्त करती है, जो इस प्रकार है "केंद्रीय सरकार किसी अन्य विधि में किसी बात के होते हुए भी, किन्तु इस अधिनियम के उपबंधों के अधीन रहते हुए इस अधिनियम के अधीन अपनी शक्तियों के प्रयोग और अपने कृत्यों के निर्वहन में किसी व्यक्ति, अधिकारी या प्राधिकरण को लिखित निदेश दे सकेगी और ऐसा व्यक्ति, अधिकारी या प्राधिकरण ऐसे निदेशों का अनुपालन करने के लिए आवद्ध होगा ;

6. पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय ने उल्लंघन के मामलों में पर्यावरणीय अनापत्ति अनुदत्त करने के लिए प्रक्रिया स्थापित करने के लिए तारीख 12.12.2012 और तारीख 27.06.2013 को एक कार्यालय ज्ञापन जारी किया है ;
7. हिन्दुस्तान कापर लिमिटेड बनाम भारत संघ के मामले में 2014 की रिट याचिका (सिविल) सं0 2364 में माननीय झारखंड उच्च न्यायालय के तारीख 28 नवंबर, 2014 के आदेश के अनुसरण में माननीय न्यायालय ने यह अभिनिर्धारित किया कि तारीख 12 दिसंबर, 2012 के कार्यालय ज्ञापन के अधीन पैरा सं0 5(i) और पैरा सं0 5(ii) की शर्तें अवैध और असंवैधानिक थीं और न्यायालय ने यह और अभिनिर्धारित किया कि अभिकथित अतिक्रमण की कार्रवाई स्वतंत्र कार्यवाही और पृथक् कार्यवाही होगी और इसलिए पर्यावरण अनापत्ति के लिए प्रस्ताव पर विचार करने के लिए परियोजना प्रस्तावक के विरुद्ध कार्रवाई आरंभ करने की प्रतीक्षा नहीं की जा सकती। माननीय न्यायालय ने यह व्यवस्था और दी कि पर्यावरण अनापत्ति के प्रस्ताव की परीक्षा इसके गुणागुण, पर्यावरण विधियों के अभिकथित अतिक्रमण के लिए किसी प्रस्तावित कार्रवाई से मुक्त आधार पर की जानी चाहिए ;
8. और राष्ट्रीय हरित अधिकरण की प्रधान न्यायपीठ ने 2015 के मूल आवेदन सं0 37 तथा 2015 के मूल आवेदन सं0 213 में तारीख 7 जुलाई, 2015 के अपने आदेश द्वारा यह अभिनिर्धारित किया कि पर्यावरण (संरक्षण) अधिनियम, 1986 या पर्यावरण समाघात निर्धारण अधिसूचना, 2006 तथा तटीय विनियमन जोन अधिसूचना, 2011 के अतिक्रमणों वाले निर्देश के निबंधनों या पर्यावरण अनापत्ति या तटीय विनियमन जोन अनापत्ति के प्रस्तावों पर विचार के विषय पर तारीख 12 दिसंबर, 2012 और 24 जून, 2013 के कार्यालय ज्ञापन पर्यावरण समाघात निर्धारण अधिसूचना, 2006 के उपबंधों को परिवर्तित या संशोधित नहीं कर सकते थे और अधिकरण ने उसे अपास्त कर दिया था ;
9. और पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय तथा राज्य पर्यावरण समाघात निर्धारण प्राधिकरण को कतिपय प्रस्ताव, निर्देशों के निबंधनों और पर्यावरणीय अनापत्ति के लिए पर्यावरण समाघात निर्धारण अधिसूचना, 2006 के अधीन ऐसी परियोजनाओं के लिए प्राप्त हो रहे हैं, जिन्होंने स्थल पर कार्य आरंभ कर दिया है, पर्यावरणीय अनापत्ति की सीमा से परे उत्पादन का विस्तार किया है या पूर्व पर्यावरणीय अनापत्ति को प्राप्त किए बिना उत्पाद मिश्रण में परिवर्तन कर दिया है ;
10. पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय ने पर्यावरण की क्वालिटी के संरक्षण और उसमें सुधार के प्रयोजन के लिए और पर्यावरणीय प्रदूषण का उपशमन करने के लिए यह आवश्यक समझा कि वह सभी निकाय, जो पर्यावरण संचात निर्धारण अधिसूचना, 2006 के अधीन पर्यावरण विनियम का अनुपालन नहीं कर रहे हैं, को समीचीन रीति में पर्यावरणीय विधियों की अनुपालना के लिए उसके अंतर्गत लाया जाए ;
11. और पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय ऐसी परियोजनाओं और क्रियाकलापों को शीघ्रतम पर्यावरणीय विधियों की अनुपालना के अधीन लाना आवश्यक समझता है न कि उन्हें अविनियमित और बिना किसी जांच के छोड़ना, जो पर्यावरण के लिए अधिक नुकसानदायक होगा तथा इस उद्देश्य को अग्रसर करने के लिए भारत सरकार ऐसी सत्ताओं को, जो अनुपालक थे, अनुपालक बनाने के लिए समुचित रक्षोपायों के साथ पर्यावरणीय अनापत्ति प्रदान करना आवश्यक समझती है, प्रक्रिया ऐसी होनी चाहिए, जो पर्यावरण समाघात निर्धारण अधिसूचना, 2006 के उपबंधों के उल्लंघन पर रोक लगाए, जिससे अनुपालना और अनुपालना के धनीय लाभ भयोपरित हों तथा पर्यावरण के नुकसान के लिए समुचित रूप से प्रतिकर हो ;
12. और माननीय उच्चतम न्यायालय ने इंडियन काउंसिल फार एन्वायरो-लीगल एक्शन बनाम भारत संघ (बिछड़ी गांव औद्योगिक प्रदूषण का मामला) में 13 फरवरी, 1996 को निर्णय देते समय विधि के सभी सुसंगत उपबंधों का विश्लेषण किया और यह निष्कर्ष दिया कि पर्यावरण (संरक्षण) अधिनियम, 1986 के अधीन नुकसानी की वसूली की जा सकती है (1996(3) एससीसी 212)। माननीय न्यायालय ने यह संप्रेक्षित किया कि पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 केंद्रीय सरकार (या, यथास्थिति, उसके प्रतिनिधि) को "ऐसे सभी उपाय करने, जो वह पर्यावरण की क्वालिटी के संरक्षण और सुधार के प्रयोजन के लिए आवश्यक या समीचीन समझे....." अभिव्यक्त रूप से सशक्त करती है। धारा 5 केंद्रीय सरकार (या उसके प्रतिनिधि) को अधिनियम के उद्देश्यों को प्राप्त करने के लिए निदेश जारी करने की शक्ति प्रदान करती है। धारा 2(क), धारा 3 और धारा 5 में "पर्यावरण" की विस्तृत परिभाषा के अनुसार केंद्रीय सरकार को ऐसी सभी शक्तियां हैं, जो "पर्यावरण की क्वालिटी के संरक्षण और सुधार के प्रयोजन के लिए आवश्यक या समीचीन" हैं। केंद्रीय सरकार, ऐसे सभी उपाय करने और ऐसे सभी निदेश जारी करने के लिए सशक्त है, जो पूर्वोक्त प्रयोजन के लिए आवश्यक हो। इस मामले में उक्त शक्तियों के अंतर्गत गाढ़े कीचड़ को हटाने, उपचारिक उपाय करने और उपचारिक उपाय करने की लागत को उल्लंघन करने वाले उद्योग पर अधिरोपित करने की शक्ति भी है तथा इस प्रकार वसूल की गई रकम का, उपचारिक उपायों को कार्यान्वित करने के लिए उपयोग करना भी है। माननीय न्यायालय ने यह और संप्रेक्षित किया है कि उपचारिक उपायों को कार्यान्वित करने के लिए अपेक्षित लागत का उद्ग्रहण धारा 3 और धारा 5 में अंतर्निहित है, जिसे अत्यधिक विस्तृत और व्यापक भाषा में व्यक्त किया गया है। पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 और धारा 5 जल और वायु अधिनियमों के अन्य उपबंधों के अतिरिक्त सरकार को ऐसे सभी निदेश करने के लिए और ऐसे सभी उपाय करने के लिए सशक्त करते हैं, जो "पर्यावरण" के संरक्षण और संवर्धन के लिए आवश्यक या समीचीन हों, जिस अभिव्यक्ति को पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 2(क) में अत्यधिक विस्तृत और व्यापक शब्दों में परिभाषित किया गया है। इस शक्ति के अंतर्गत किसी उद्योग कि निकट किसी क्रियाकलाप को प्रतिषिद्ध करने, उपचारिक उपायों को कार्यान्वित करने का निदेश देने और जहां कहीं आवश्यक हो, उल्लंघन करने वाले उद्योग पर उपचारिक उपायों

की लागत अधिरोपित करने की शक्ति भी है। प्रत्यर्थियों के उपचारिक उपायों की लागत की अदायगी के दायित्व का प्रश्न दूसरे दृष्टिकोण से भी देखा जा सकता है, जिसे अब सार्वभौमिक रूप से ठोस सिद्धांत के रूप में स्वीकार किया गया है, जैसे "प्रदूषणकर्ता संदाय करता है" का सिद्धांत। "प्रदूषणकर्ता संदाय करता है, सिद्धांत की यह मांग है कि प्रदूषण द्वारा कारित नुकसान को रोकने या उसका उपचार करने की वित्तीय लागत इस वचनबंध, कि जो प्रदूषण कारित करता है या ऐसे माल का उत्पादन करता है, जो प्रदूषण कारित करता है, के साथ होती है।"

13. (1) इसलिए अब, केंद्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (i) के उपखंड (क) और खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निवेश देती है कि परियोजना या क्रियाकलाप या विद्यमान परियोजनाओं का विस्तार या आधुनिकीकरण या क्रियाकलाप, जिनके द्वारा पर्यावरण संघात निर्धारण अधिसूचना, 2006 के अधीन पूर्व पर्यावरणीय अनापत्ति अपेक्षित है भारत के किसी भाग में, यथास्थिति, केंद्रीय सरकार द्वारा उक्त अधिनियम की धारा 3 की उपधारा (3) के अधीन गठित केंद्रीय सरकार या राज्य स्तरीय पर्यावरण संघात निर्धारण प्राधिकरण से पूर्व पर्यावरणीय अनापत्ति प्राप्त किए बिना, जिसमें प्रक्रिया या प्रौद्योगिकी में परिवर्तन के साथ क्षमता में वर्धन या दोनों को शामिल किया गया है, को पर्यावरण संघात निर्धारण अधिसूचना, 2006 के उल्लंघन का मामला माना जाएगा और उससे निम्नलिखित रीति में विनिर्दिष्ट प्रक्रिया के अनुसार व्यौहार किया जाएगा ;

(2) उस दशा में, जब पर्यावरण समाघात निर्धारण अधिसूचना, 2006 के अधीन संबंधित विनियामक प्राधिकरण से पूर्व पर्यावरणीय अनापत्ति की अपेक्षा वाली परियोजनाएं या क्रियाकलाप संनिर्माण कार्य आरंभ करने के पश्चात् पर्यावरणीय अनापत्ति के लिए लायी जाती हैं या जिन्होंने पूर्व पर्यावरणीय अनापत्ति के बिना विस्तार, आधुनिकीकरण और उत्पाद मिश्रण में परिवर्तन किया है, उन परियोजनाओं को अतिक्रमण के मामले के रूप में समझा जाएगा और ऐसे मामलों में यहां तक कि प्रवर्ग ख की परियोजनाएं, जिन्हें पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (3) के अधीन गठित राज्य पर्यावरण संघात निर्धारण प्राधिकरण द्वारा पर्यावरणीय अनापत्ति अनुदत्त की गई है, का पर्यावरणीय अनापत्ति अनुदत्त करने के लिए विशेषज्ञ मूल्यांकन समिति द्वारा ही मूल्यांकन किया जाएगा और पर्यावरणीय अनापत्ति केंद्रीय स्तर पर अनुदत्त की जाएगी।

(3) उल्लंघन के मामलों में पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 19 के उपबंधों के अधीन संबंधित राज्य या राज्य प्रदूषण नियंत्रण बोर्ड द्वारा परियोजना प्रस्तावक के विरुद्ध कार्रवाई की जाएगी और इसके अतिरिक्त परियोजना को पर्यावरण अनापत्ति अनुदत्त किए जाने तक प्रचालन करने के लिए या अधिभोग प्रमाणपत्र जारी किए जाने के लिए अनुमति नहीं दी जाएगी।

(4) पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (3) के अधीन गठित संबंधित क्षेत्र विशेषज्ञ मूल्यांकन समिति द्वारा उल्लंघन के मामलों का यह मूल्यांकन करने के लिए निर्धारण किया जाएगा कि परियोजना का ऐसे स्थल पर संनिर्माण किया गया है जो लागू विधियों के अधीन अनुज्ञेय है और विस्तार किया गया है, जिसको पर्याप्त पर्यावरणीय सुरक्षोपायों के साथ पर्यावरणीय मानकों की अनुपालना के अधीन भरणीय रूप से चलाया जा सकता है ; और उस दशा में जहां विशेषज्ञ मूल्यांकन समिति का निष्कर्ष नकारात्मक है, विधि के अधीन अन्य कार्रवाईयों के साथ परियोजना को बंद करने की सिफारिश की जाएगी।

(5) उस दशा में जहां पूर्वोक्त उप पैरा (4) के बिन्दु पर विशेषज्ञ मूल्यांकन समिति के निष्कर्ष सकारात्मक हैं, इस प्रवर्ग के अधीन परियोजनाओं को पर्यावरण संघात निर्धारण करने और पर्यावरणीय प्रबंधन योजना तैयार करने के लिए समुचित निदेश निबंधनों के साथ विहित किया जाएगा। इसके अतिरिक्त विशेषज्ञ मूल्यांकन समिति पारिस्थितिकीय नुकसान, सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के निर्धारण पर परियोजना के विशिष्ट निदेश निबंधनों को विहित करेगी और उनको प्रत्यायित परामर्शदाताओं द्वारा पर्यावरण संघात निर्धारण रिपोर्ट में एक स्वतंत्र अध्याय के रूप में तैयार किया जाएगा। पारिस्थितिकीय नुकसान, सुधारकारी योजना तैयार करने और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के निर्धारण के लिए डाटा का संग्रहण और विश्लेषण, पर्यावरण (संरक्षण) अधिनियम, 1986 के अधीन सम्यक्ता अधिसूचित प्रयोगशाला या राष्ट्रीय जांच और अशांकन प्रत्यायन बोर्ड द्वारा प्रत्यायित प्रयोगशाला या वैज्ञानिक और औद्योगिक अनुसंधान परिषद् की पर्यावरण के क्षेत्र में कार्य कर रही प्रयोगशाला द्वारा किया जाएगा।

(6) विशेषज्ञ मूल्यांकन समिति, पर्यावरणीय प्रबंधन योजना, सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना से मिलकर बनने वाली पर्यावरणीय प्रबंधन योजना को उपदर्शित करेगी, जो कि मूल्यांकन किए गए पर्यावरणीय नुकसान और पर्यावरणीय अनापत्ति की शर्त के उल्लंघन के कारण उद्भूत आर्थिक फायदे की तत्स्थानी होगी।

(7) परियोजना प्रस्तावक से सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना की रकम के समतुल्य बैंक प्रत्याभूति को राज्य प्रदूषण नियंत्रण बोर्ड के पास प्रस्तुत करने की अपेक्षा होगी और मात्रा की सिफारिश विशेषज्ञ मूल्यांकन समिति द्वारा की जाएगी और इसको विनियामक प्राधिकरण द्वारा अंतिम रूप दिया जाएगा तथा बैंक प्रत्याभूति को पर्यावरणीय अनापत्ति अनुदत्त करने

से पूर्व जमा किया जाएगा और उसे मंत्रालय के प्रादेशिक कार्यालय, विशेषज्ञ मूल्यांकन समिति तथा विनियामक प्राधिकरण के अनुमोदन के पश्चात् सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के सफलतापूर्वक कार्यान्वयन के पश्चात् निर्मुक्त किया जाएगा।

14. ऐसी परियोजनाएं और क्रियाकलाप, जो इस अधिसूचना की तारीख को उल्लंघनकारी हैं, इस अधिसूचना के अधीन पर्यावरणीय अनापत्ति के लिए आवेदन करने के पात्र होंगे और परियोजना प्रस्तावक इस अधिसूचना के अधीन पर्यावरणीय अनापत्ति के लिए केवल इस अधिसूचना की तारीख से छह मास के भीतर ही आवेदन कर सकते हैं।

[फा. सं. 22-116/2015-आईए-III]

मनोज कुमार सिंह, संयुक्त सचिव

**MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
NOTIFICATION**

New Delhi, the 14th March, 2017

S.O. 804(E).—Whereas, a draft notification under sub-section (1), and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), *vide* number S.O. 1705(E), dated the 10th May, 2016, as required by sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, for finalising the process for appraisal of projects for grant of Terms of Reference and Environmental Clearance, which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance under the Environment Impact Assessment Notification, 2006 inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of Gazette containing the said notification were made available to the public;

2. And whereas, copies of the said notification were made available to the public on the 10th May, 2016;

3. And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government.

4. Whereas, subject to the provisions of the Environment (Protection) Act, 1986, under sub-section (1) of section 3 of the Act, the Central Government has the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling, and abating environment pollution;

5. Whereas, section 5 of the Environment (Protection) Act, 1986 empowers the Central Government to give directions which reads as “Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions;

6. Whereas the Ministry of Environment, Forest and Climate Change issued Office Memoranda dated 12.12.2012 and 27.06.2013 to establish a process for grant of environmental clearance to cases of violation.

7. Whereas, the Hon’ble High Court of Jharkhand had passed an order dated the 28th November, 2014 in W.P. (C) No. 2364 of 2014 in the matter of Hindustan Copper Limited *Versus* Union of India in which the High Court held that the conditions laid down under Office Memorandum dated 12th December, 2012 in paragraph No. 5 (i) and 5 (ii) were illegal and unconstitutional and had further held that action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance could not await initiation of action against the project proponent. The Hon’ble Court further ruled that the proposal for environment clearance must be examined on its merits, independent of any proposed action for alleged violation of the environmental laws;

8. And whereas, Hon'ble National Green Tribunal, Principal Bench *vide* its order dated 7th July, 2015 in Original Application No. 37 of 2015 and Original Application No. 213 of 2015 had also held that the Office Memoranda dated 12th December, 2012 and 24th June, 2013 on the subject of consideration of proposals for Terms of Reference or Environment Clearance or Coastal Regulation Zone Clearance involving violations of the Environment (Protection) Act, 1986 or Environment Impact Assessment Notification, 2006 Coastal Regulation Zone Notification, 2011 could not alter or amend the provisions of the Environment Impact Assessment notification, 2006 and had quashed the same;

9. And whereas, the Ministry of Environment, Forest and Climate Change and State Environment Impact Assessment Authorities have been receiving certain proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of References and Environmental Clearance for projects which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance;

10. Whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for the purpose of protecting and improving the quality of the environment and abating environmental pollution that all entities not complying with environmental regulation under Environment Impact Assessment Notification, 2006 be brought under compliance with in the environmental laws in expedient manner;

11. And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which will be more damaging to the environment and in furtherance of this objective, the Government of India deems it essential to establish a process for appraisal of such cases of violation for prescribing adequate environmental safeguards to entities and the process should be such that it deters violation of provisions of Environment Impact Assessment Notification, 2006 and the pecuniary benefit of violation and damage to environment is adequately compensated for;

12. And whereas, Hon'ble Supreme Court in *Indian Council for Enviro-Legal Action Vs. Union of India* (the Bichhri village industrial pollution case), while delivering its judgment on 13th. February, 1996, analyzed all the relevant provisions of law and concluded that damages may be recovered under the provisions of the Environment (Protection) Act, 1986 (1996 [3] SCC 212). The Hon'ble Court observed that section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....". Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2 (a), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures..... Hon'ble Court has further observed that levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5 which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures can also be

looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

13 (1). Now, therefore, in exercise of the powers conferred by sub-section (1) and sub clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986; the Central Government hereby directs that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner:-

(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.

(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.

(6) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.


STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

Environment department,
Room No. 217, 2nd floor,
Mantralaya, Annexe,
Mumbai- 400 032.
Date: September 20, 2019

To,
Paranjape Schemes (Construction) Limited
at Survey No. 136/2, Baner Pashan Link Road, Pune ,Maharashtra

Subject: Environment Clearance for Application for proposed expansion of Residential Complex

Sir,

This has reference to your communication on the above mentioned subject. The proposal was considered as per the EIA Notification - 2006, by the State Level Expert Appraisal Committee-III, Maharashtra in its 90th meeting and recommend the project for prior environmental clearance to SEIAA. Information submitted by you has been considered by State Level Environment Impact Assessment Authority in its 174th meetings.

2. It is noted that the proposal is considered by SEAC-III under screening category 8 (a) B2 as per EIA Notification 2006.

Brief Information of the project submitted by you is as below :-

1.Name of Project	Magnolia by Paranjape Schemes (Construction) Limited
2.Type of institution	Private
3.Name of Project Proponent	Paranjape Schemes (Construction) Limited
4.Name of Consultant	Mahabal Enviro Engineers Pvt.Ltd. Thane , Maharashtra
5.Type of project	Residential and Commercial Project
6.New project/expansion in existing project/modernization/diversification in existing project	Expansion in Existing project
7.If expansion/diversification, whether environmental clearance has been obtained for existing project	Yes, We have received Environment Clearance from Ministry of Environment and Forest GoI vide no. 21-670/2006-IA.III Dated 25th June 2007.
8.Location of the project	Survey No. 136/2, Baner Pashan Link Road, Pune ,Maharashtra
9.Taluka	Haveli
10.Village	Baner
Correspondence Name:	Paranjape Schemes (Construction) Ltd. Blue Ridge, Near Cognizant, Rajiv Gandhi Infotech Park-Phase I, Hinjawadi, Pune-411057
Room Number:	-
Floor:	-
Building Name:	Blue Ridge
Road/Street Name:	Near Cognizant, Rajiv Gandhi Infotech Park-Phase I
Locality:	Hinjawadi
City:	Pune
11.Whether in Corporation / Municipal / other area	Pune Municipal Corporation (PMC)
12.IOD/IOA/Concession/Plan Approval Number	Sanction plan received from Pune Municipal Corporation vide CC/0319/19 Dated 17.05.2019 IOD/IOA/Concession/Plan Approval Number: Sanction plan received from Pune Municipal Corporation vide CC/0319/19 Dated 17.05.2019 Approved Built-up Area: 35966

SEIAA Meeting No: 174 Meeting Date: August 29, 2019 (SEIAA-STATEMENT-000001583)
SEIAA-MINUTES-0000002458
SEIAA-EC-0000002017

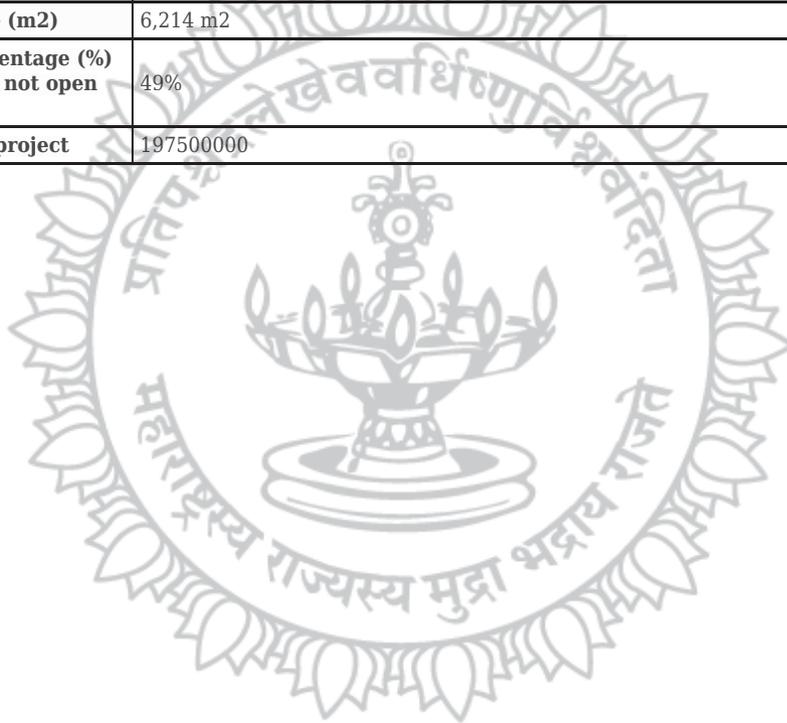
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Shri. Anil Diggikar (Member Secretary SEIAA)

T.C.



13.Note on the initiated work (If applicable)	Completed construction work as per earlier Environment Clearance .
14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)	Not applicable
15.Total Plot Area (sq. m.)	17,400 m2
16.Deductions	4,601 m2
17.Net Plot area	12,799 m2
18 (a).Proposed Built-up Area (FSI & Non-FSI)	FSI area (sq. m.): 25,064 m2
	Non FSI area (sq. m.): 11,692 m2
	Total BUA area (sq. m.): 36756
18 (b).Approved Built up area as per DCR	Approved FSI area (sq. m.): 24,274 m2
	Approved Non FSI area (sq. m.): 11,692 m2
	Date of Approval: 17-05-2019
19.Total ground coverage (m2)	6,214 m2
20.Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)	49%
21.Estimated cost of the project	197500000



Government of Maharashtra

22. Production Details

Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1	Not applicable	Not applicable	Not applicable	Not applicable

23. Total Water Requirement

Dry season:	Source of water	Pune Municipal Corporation (PMC)
	Fresh water (CMD):	19 m3/day
	Recycled water - Flushing (CMD):	16 m3/day
	Recycled water - Gardening (CMD):	0 m3/day
	Swimming pool make up (Cum):	NA
	Total Water Requirement (CMD) :	35 m3/day
	Fire fighting - Underground water tank(CMD):	100 m3
	Fire fighting - Overhead water tank(CMD):	10 m3
	Excess treated water	15 m3/day
Wet season:	Source of water	Pune Municipal Corporation (PMC)
	Fresh water (CMD):	19 m3/day
	Recycled water - Flushing (CMD):	16 m3/day
	Recycled water - Gardening (CMD):	0 m3/day
	Swimming pool make up (Cum):	NA
	Total Water Requirement (CMD) :	35 m3/day
	Fire fighting - Underground water tank(CMD):	100 m3
	Fire fighting - Overhead water tank(CMD):	10 m3
	Excess treated water	15 m3/day
Details of Swimming pool (If any)	NA	

24.Details of Total water consumed

Particulars	Consumption (CMD)			Loss (CMD)			Effluent (CMD)		
	Existing	Proposed	Total	Existing	Proposed	Total	Existing	Proposed	Total
Domestic	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

25.Rain Water Harvesting (RWH)	Level of the Ground water table:	22-25 meter
	Size and no of RWH tank(s) and Quantity:	NA
	Location of the RWH tank(s):	NA
	Quantity of recharge pits:	2 Nos.
	Size of recharge pits :	2 m x 2 m x 2 m
	Budgetary allocation (Capital cost) :	Rs. 3 Lakh
	Budgetary allocation (O & M cost) :	Rs. 1 Lakh/year
Details of UGT tanks if any :	Underground tank- 1) Domestic UGT- 37 m3 2) Flushing UGT- 16 m3 3) Fire UGT- 100 m3 Overhead tank- 1) Domestic overhead tank -19 m3 2) Flushing overhead tank - 16 m3 3) Fire overhead tank - 10 m3	

26.Storm water drainage	Natural water drainage pattern:	By gravity
	Quantity of storm water:	70 m3 /hr
	Size of SWD:	300 mm

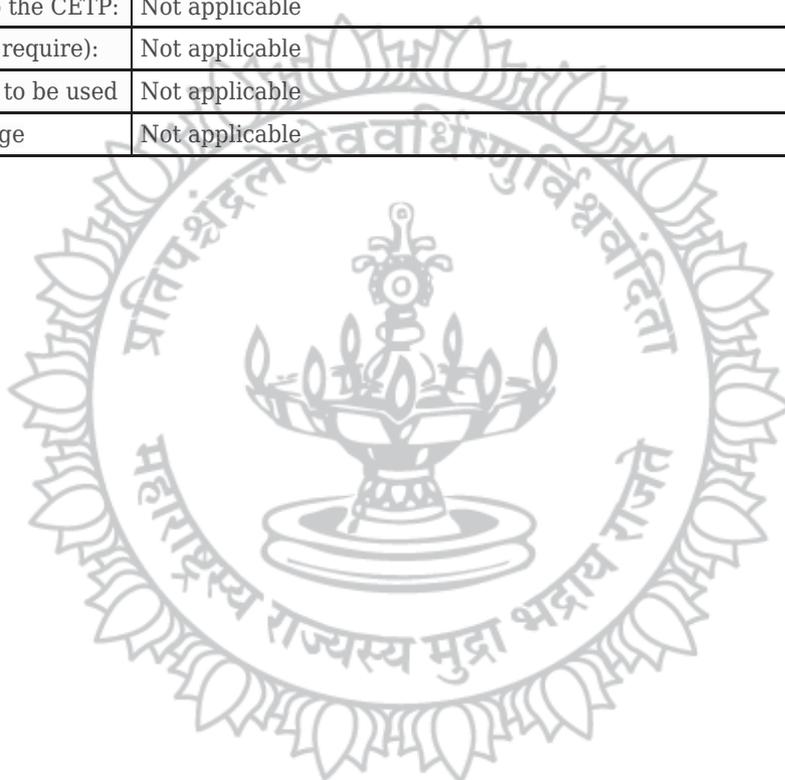
27.Sewage and Waste water	Sewage generation in KLD:	33 m3/day
	STP technology:	MBBR
	Capacity of STP (CMD):	1 no. x 35 m3/day
	Location & area of the STP:	Stilt Floor
	Budgetary allocation (Capital cost):	Rs. 21 Lakh
	Budgetary allocation (O & M cost):	Rs. 6 Lakh/year

28.Solid waste Management

Waste generation in the Pre Construction and Construction phase:	Waste generation:	3,200 m ³
	Disposal of the construction waste debris:	Top soil will be used for landscaping. The construction debris will be utilized at site for road paving and plinth filling.
Waste generation in the operation Phase:	Dry waste:	116 kg/day
	Wet waste:	39 kg/day
	Hazardous waste:	NA
	Biomedical waste (If applicable):	NA
	STP Sludge (Dry sludge):	0.3 kg/day
	Others if any:	NA
Mode of Disposal of waste:	Dry waste:	Dry garbage will be segregated and will be handed over to recycler .
	Wet waste:	Wet waste will be composted and used as organic manure for landscaping .
	Hazardous waste:	Not Applicable
	Biomedical waste (If applicable):	Not Applicable
	STP Sludge (Dry sludge):	Dry sludge will be used as manure for landscaping .
	Others if any:	Not Applicable
Area requirement:	Location(s):	Stilt floor
	Area for the storage of waste & other material:	25 m ²
	Area for machinery:	4 m ²
Budgetary allocation (Capital cost and O&M cost):	Capital cost:	Rs. 6 Lakh
	O & M cost:	Rs. 1 Lakh/year

Government of Maharashtra

29.Effluent Charecterestics					
Serial Number	Parameters	Unit	Inlet Effluent Charecterestics	Outlet Effluent Charecterestics	Effluent discharge standards (MPCB)
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Amount of effluent generation (CMD):		Not applicable			
Capacity of the ETP:		Not applicable			
Amount of treated effluent recycled :		Not applicable			
Amount of water send to the CETP:		Not applicable			
Membership of CETP (if require):		Not applicable			
Note on ETP technology to be used		Not applicable			
Disposal of the ETP sludge		Not applicable			



**Government of
Maharashtra**

30.Hazardous Waste Details							
Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
31.Stacks emission Details							
Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases	
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	
32.Details of Fuel to be used							
Serial Number	Type of Fuel	Existing	Proposed	Total			
1	Not applicable	Not applicable	Not applicable	Not applicable			
33.Source of Fuel		Not applicable					
34.Mode of Transportation of fuel to site		Not applicable					
35.Energy							
Power requirement:	Source of power supply :	MSEDCL					
	During Construction Phase: (Demand Load)	48 kW					
	DG set as Power back-up during construction phase	62.5 kVA					
	During Operation phase (Connected load):	600 kW					
	During Operation phase (Demand load):	450 kW					
	Transformer:	1 no. x 630 kVA					
	DG set as Power back-up during operation phase:	1 no. x 500 kVA					
	Fuel used:	Diesel					
	Details of high tension line passing through the plot if any:	NA					
Energy saving by non-conventional method:							
1. Installation of Solar PV panels at 1% of Demand Load 2. Use of LED Lights 3. Energy efficient motors and pumps							
36.Detail calculations & % of saving:							
Serial Number	Energy Conservation Measures				Saving %		

1	Use of solar PV panels	1%		
37.Details of pollution control Systems				
Source	Existing pollution control system	Proposed to be installed		
Not applicable	Not applicable	Not applicable		
Budgetary allocation (Capital cost and O&M cost):	Capital cost:	Rs. 4 Lakh		
	O & M cost:	Rs. 1 Lakh/year		
38.Environmental Management plan Budgetary Allocation				
a) Construction phase (with Break-up):				
Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)	
1	Air Environment	Water for dust suppression	Rs.1	
2	Socio- Economic Environment	Site sanitation, Toilets, STP, safe drinking water	Rs.2	
3	-	Disinfection at site	Rs.1	
4	-	Health check-up for workers, first aid kit	Rs.1	
5	-	Safety net	Rs.1	
6	Environment management	For Air, Noise, Water Analysis	Rs.1	
7	-	Site fencing & noise barrier	Rs.2	
8	-	Traffic management	Rs.1	
9	-	Vehicle maintenance, washing area, tyre cleaning	Rs.1	
10	-	Tree plantation & water utilization	Rs.1	
11	Training and awareness	Safety personal protective equipment & Training programs	Rs.1	
12	Total	-	Rs.13	
b) Operation Phase (with Break-up):				
Serial Number	Component	Description	Capital cost Rs. In Lacs	Operational and Maintenance cost (Rs. in Lacs/yr)
1	Water Environment	-	-	-
2	Sewage treatment plant	1 no. of STP having capacity of 35 m3/day	Rs.21	Rs.6
3	Rain Water Harvesting	2 no. of proposed recharge pits of size 2 m x 2 m x 2 m	Rs.3	Rs.1
4	Solid Waste Management	Cost for Treatment of biodegradable garbage in OWC (1 nos.)	Rs.6	Rs.1

5	Landscape development	184 nos. of trees to be planted. Developed and maintained landscape area is 1,461 m ²	Rs.5	Rs.1
6	Air Environment	-	-	-
7	Environmental Monitoring	Monitoring and analysis of Air and Noise, water, soil etc	MoEF Approved Lab	Rs.3
8	Energy Conservation	Solar street lighting	Rs.4	Rs.1
9	Fire Fighting System	-	Rs.35	Rs.4
10	Total	-	Rs.74	Rs.17

39.Storage of chemicals (inflammable/explosive/hazardous/toxic substances)

Description	Status	Location	Storage Capacity in MT	Maximum Quantity of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

40.Any Other Information

No Information Available

Government of
Maharashtra

	CRZ/ RRZ clearance obtain, if any:	Not Applicable
	Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries	Not Applicable
	Category as per schedule of EIA Notification sheet	8 (a) B2
	Court cases pending if any	Not Applicable
	Other Relevant Informations	This project has received Environment Clearance from Ministry of Environment and Forest GoI vide no. 21-670/2006-IA.III Dated 25th June 2007. We have completed construction of Residential Project as per given Environmental Clearance. We are applying for expansion of Commercial project.
	Have you previously submitted Application online on MOEF Website.	No
	Date of online submission	-

3. The proposal has been considered by SEIAA in its 174th meeting & decided to accord environmental clearance to the said project under the provisions of Environment Impact Assessment Notification, 2006 subject to implementation of the following terms and conditions:

Specific Conditions:

I	.
II	PP to submit CER plan to Municipal Commissioner/District Collector and submit the acknowledgement to Member Secretary, SEIAA.
III	PP Shall comply with Standard EC conditions mentioned in the Office Memorandum issued by MoEF & CC vide F.No.22-34/2018-IA.III dt.04.01.2019.
IV	SEIAA decided to grant EC for: FSI: 24274.35 m2, Non-FSI:11692.00 m2 and Total BUA: 35966.35 m2 (Approval no-CC/0319/19, Date-17.05.2019)

General Conditions:

I	E-waste shall be disposed through Authorized vendor as per E-waste (Management and Handling) Rules, 2016.
II	The Occupancy Certificate shall be issued by the Local Planning Authority to the project only after ensuring sustained availability of drinking water, connectivity of sewer line to the project site and proper disposal of treated water as per environmental norms.
III	This environmental clearance is issued subject to obtaining NOC from Forestry & Wild life angle including clearance from the standing committee of the National Board for Wild life as if applicable & this environment clearance does not necessarily implies that Forestry & Wild life clearance granted to the project which will be considered separately on merit.
IV	PP has to abide by the conditions stipulated by SEAC& SEIAA.
V	The height, Construction built up area of proposed construction shall be in accordance with the existing FSI/FAR norms of the urban local body & it should ensure the same along with survey number before approving layout plan & before according commencement certificate to proposed work. Plan approving authority should also ensure the zoning permissibility for the proposed project as per the approved development plan of the area.
VI	If applicable Consent for Establishment" shall be obtained from Maharashtra Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment department before start of any construction work at the site.
VII	All required sanitary and hygienic measures should be in place before starting construction activities and to be maintained throughout the construction phase.

VIII	Adequate drinking water and sanitary facilities should be provided for construction workers at the site. Provision should be made for mobile toilets. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.
IX	The solid waste generated should be properly collected and segregated. dry/inert solid waste should be disposed off to the approved sites for land filling after recovering recyclable material.
X	Disposal of muck during construction phase should not create any adverse effect on the neighboring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.
XI	Arrangement shall be made that waste water and storm water do not get mixed.
XII	All the topsoil excavated during construction activities should be stored for use in horticulture / landscape development within the project site.
XIII	Additional soil for leveling of the proposed site shall be generated within the sites (to the extent possible) so that natural drainage system of the area is protected and improved.
XIV	Green Belt Development shall be carried out considering CPCB guidelines including selection of plant species and in consultation with the local DFO/ Agriculture Dept.
XV	Soil and ground water samples will be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.
XVI	Construction spoils, including bituminous material and other hazardous materials must not be allowed to contaminate watercourses and the dumpsites for such material must be secured so that they should not leach into the ground water.
XVII	Any hazardous waste generated during construction phase should be disposed off as per applicable rules and norms with necessary approvals of the Maharashtra Pollution Control Board.
XVIII	The diesel generator sets to be used during construction phase should be low sulphur diesel type and should conform to Environments (Protection) Rules prescribed for air and noise emission standards.
XIX	The diesel required for operating DG sets shall be stored in underground tanks and if required, clearance from concern authority shall be taken.
XX	Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to applicable air and noise emission standards and should be operated only during non-peak hours.
XXI	Ambient noise levels should conform to residential standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/MPCB.
XXII	Fly ash should be used as building material in the construction as per the provisions of Fly Ash Notification of September 1999 and amended as on 27th August, 2003. (The above condition is applicable only if the project site is located within the 100Km of Thermal Power Stations).
XXIII	Ready mixed concrete must be used in building construction.
XXIV	Storm water control and its re-use as per CGWB and BIS standards for various applications.
XXV	Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.
XXVI	The ground water level and its quality should be monitored regularly in consultation with Ground Water Authority.
XXVII	The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the MPCB and Environment department before the project is commissioned for operation. Discharge of this unused treated effluent, if any should be discharge in the sewer line. Treated effluent emanating from STP shall be recycled/refused to the maximum extent possible. Discharge of this unused treated effluent, if any should be discharge in the sewer line. Treatment of 100% gray water by decentralized treatment should be done. Necessary measures should be made to mitigate the odour problem from STP.
XXVIII	Permission to draw ground water and construction of basement if any shall be obtained from the competent Authority prior to construction/operation of the project.
XXIX	Separation of gray and black water should be done by the use of dual plumbing line for separation of gray and black water.
XXX	Fixtures for showers, toilet flushing and drinking should be of low flow either by use of aerators or pressure reducing devices or sensor based control.
XXXI	Use of glass may be reduced up to 40% to reduce the electricity consumption and load on air conditioning. If necessary, use high quality double glass with special reflective coating in windows.
XXXII	Roof should meet prescriptive requirement as per Energy Conservation Building Code by using appropriate thermal insulation material to fulfill requirement.

XXXIII	Energy conservation measures like installation of CFLs /TFLs for the lighting the areas outside the building should be integral part of the project design and should be in place before project commissioning. Use CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/rules of the regulatory authority to avoid mercury contamination. Use of solar panels may be done to the extent possible like installing solar street lights, common solar water heaters system. Project proponent should install, after checking feasibility, solar plus hybrid non-conventional energy source as source of energy.
XXXIV	Diesel power generating sets proposed as source of backup power for elevators and common area illumination during operation phase should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use low sulphur diesel. The location of the DG sets may be decided with in consultation with Maharashtra Pollution Control Board.
XXXV	Noise should be controlled to ensure that it does not exceed the prescribed standards. During nighttime the noise levels measured at the boundary of the building shall be restricted to the permissible levels to comply with the prevalent regulations.
XXXVI	Traffic congestion near the entry and exit points from the roads adjoining the proposed project site must be avoided. Parking should be fully internalized and no public space should be utilized.
XXXVII	Opaque wall should meet prescriptive requirement as per Energy Conservation Building Code, which is proposed to be mandatory for all air-conditioned spaces while it is aspiration for non-air-conditioned spaces by use of appropriate thermal insulation material to fulfill requirement.
XXXVIII	The building should have adequate distance between them to allow movement of fresh air and passage of natural light, air and ventilation.
XXXIX	Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings.
XL	Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the project proponent if it was found that construction of the project has been started without obtaining environmental clearance.
XLI	Six monthly monitoring reports should be submitted to the Regional office MoEF, Bhopal with copy to this department and MPCB.
XLII	Project proponent shall ensure completion of STP, MSW disposal facility, green belt development prior to occupation of the buildings. As agreed during the SEIAA meeting, PP to explore possibility of utilizing excess treated water in the adjacent area for gardening before discharging it into sewer line No physical occupation or allotment will be given unless all above said environmental infrastructure is installed and made functional including water requirement in Para 2. Prior certification from appropriate authority shall be obtained.
XLIII	Wet garbage should be treated by Organic Waste Converter and treated waste (manure) should be utilized in the existing premises for gardening. And, no wet garbage will be disposed outside the premises. Local authority should ensure this.
XLIV	Local body should ensure that no occupation certification is issued prior to operation of STP/MSW site etc. with due permission of MPCB.
XLV	A complete set of all the documents submitted to Department should be forwarded to the Local authority and MPCB.
XLVI	In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Department.
XLVII	A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.
XLVIII	Separate funds shall be allocated for implementation of environmental protection measures/EMP along with item-wise breaks-up. These cost shall be included as part of the project cost. The funds earmarked for the environment protection measures shall not be diverted for other purposes and year-wise expenditure should reported to the MPCB & this department.
XLIX	The project management shall advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in the Marathi language of the local concerned within seven days of issue of this letter, informing that the project has been accorded environmental clearance and copies of clearance letter are available with the Maharashtra Pollution Control Board and may also be seen at Website at http://ec.maharashtra.gov.in .
L	Project management should submit half yearly compliance reports in respect of the stipulated prior environment clearance terms and conditions in hard & soft copies to the MPCB & this department, on 1st June & 1st December of each calendar year.
LI	A copy of the clearance letter shall be sent by proponent to the concerned Municipal Corporation and the local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Company by the proponent.

LII	The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely; SPM, RSPM, SO ₂ , NO _x (ambient levels as well as stack emissions) or critical sector parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.
LIII	The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB.
LIV	The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEF by e-mail.



Government of Maharashtra

4. The environmental clearance is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent. Hence this clearance does not give immunity to the project proponent in the case filed against him, if any or action initiated under EP Act.

5. In case of submission of false document and non-compliance of stipulated conditions, Authority/ Environment Department will revoke or suspend the Environment clearance without any intimation and initiate appropriate legal action under Environmental Protection Act, 1986.

6. The Environment department reserves the right to add any stringent condition or to revoke the clearance if conditions stipulated are not implemented to the satisfaction of the department or for that matter, for any other administrative reason.

7. Validity of Environment Clearance: The environmental clearance accorded shall be valid as per EIA Notification, 2006, and amendments by MoEF&CC Notification dated 29th April, 2015.

8. In case of any deviation or alteration in the project proposed from those submitted to this department for clearance, a fresh reference should be made to the department to assess the adequacy of the condition(s) imposed and to incorporate additional environmental protection measures required, if any.

9. The above stipulations would be enforced among others under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and rules there under, Hazardous Wastes (Management and Handling) Rules, 1989 and its amendments, the public Liability Insurance Act, 1991 and its amendments.

10. Any appeal against this Environment clearance shall lie with the National Green Tribunal (Western Zone Bench, Pune), New Administrative Building, 1st Floor, D- Wing, Opposite Council Hall, Pune, if preferred, within 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.


Shri. Anil Diggikar (Member Secretary SEIAA)

Copy to:

1. SHRI JOHNY JOSEPH, CHAIRMAN-SEIAA
2. SHRI UMAKANT DANGAT, CHAIRMAN-SEAC-I
3. SHRI M.M.ADTANI, CHAIRMAN-SEAC-II
4. SHRI ANIL .D. KALE. CHAIRMAN SEAC-III
5. SECRETARY MOEF & CC
6. IA- DIVISION MOEF & CC
7. MEMBER SECRETARY MAHARASHTRA POLLUTION CONTROL BOARD MUMBAI
8. REGIONAL OFFICE MOEF & CC NAGPUR
9. MUNICIPAL COMMISSIONER PUNE
10. MUNICIPAL COMMISSIONER SATARA
11. REGIONAL OFFICE MPCB PUNE
12. REGIONAL OFFICE MIDC PUNE
13. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD
14. COLLECTOR OFFICE PUNE
15. COLLECTOR OFFICE SATARA
16. COLLECTOR OFFICE SOLAPUR

F. No. 22-21/2020-IA.III

Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division

Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj
New Delhi - 110003
sujit.baju@gov.in

Date: 7th July, 2021

Office Memorandum

Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.

The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that "(...) **for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process**".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that "**...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country**".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been

pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

7. Relevant Court Cases on the issue: It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, **the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases and have enunciated principles of 'Proportionality' and 'Polluter Pays' in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014). The salient extracts of the judgements are as under:**

Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:

i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014

Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."

*"(...) the proposal of the petitioner company for **environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws.**"*

ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017

Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating

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pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has to be in the negative.**"

"29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms."

Issue 2: Environmental Clearance – Prospective & not ex-post facto:

Hon'ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017

Held: "(...) an EC will come into force not earlier than the date of its grant."

Issue 3: 'Principles of Proportionality' – to be applied:

Hon'ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020

Held: "(...) this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality"

Issue 4: 'Polluter pays' principle &

Issue 5: Costs for remedial measures implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.

Hon'ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)

Held:

a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will **include giving directions ...** and also the power to **impose the cost of remedial measures** on the offending industry and utilize the amount so recovered for carrying out remedial measures.....

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b) **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the **"Polluter Pays" Principle**. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

8. Legal provisions:

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes 'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'.

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

9. Definition of Violation and Non-compliance:

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

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i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.

ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

10. Standard Operating Procedure – Guiding Principles:

i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19** of The Environment (Protection) Act, 1986 **against all violations.**

ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished.**

iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**

iv. **Polluter pays:** Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.

v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

11. SOP for dealing with the violation cases:

Step 1: Closure or Revision

Sl no.	Status of EC	Actions
1	If no prior EC has been taken	Order to close its operation
2.	If prior EC is available for existing/old unit	Order to revert the activity/production to permissible limits.
3.	If prior EC was not required for earlier production level but is now required	Restrict the activity/production to the extent to which prior EC was not required.

Step 2: Action under Environment (Projection) Act, 1986

Action under section 15 read with section 19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

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Step: 3: Appraisal under EIA Notification, 2006

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

A. If not permissible:

i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing.**

*Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be **closed & demolished.***

ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

B. If permissible:

i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.

ii. Such cases of violation shall be subject to appropriate

(a) Damage Assessment

(b) Remedial Plan and

(c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.

iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue.**

v. However, during appraisal after examination if it is found that even though the project may **be permissible but not environmentally sustainable in its present**

form/configuration/features then the project shall be directed to be **modified so that the project would be environmentally sustainable.**

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be **demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).**

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to **submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA).** The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and **will be released after successful implementation of the Remediation plan and Natural & Community Resource Augmentation Plan.**

Note - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, **shall be effective only from the date of issuance of such clearance** and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

12. Penalty provisions for Violation cases and applications:

a. For new projects:

- i. **Where operation has not commenced:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]
- ii. **Where operations have commenced without EC:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report **PLUS** 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

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b. **For expansion projects:**

- i. **Where operation/production with expanded capacity has not commenced:**
1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.
- ii. **Where operation/ production with expanded capacity have commenced:**
1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

13. Identification of Violation cases:

With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment. Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

- i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior

Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

- ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.
- iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.

14. This is issued with the approval of the Competent Authority.


 (Dr. Sujit Kumar Bajpayee)
 Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).



Ax-P

PARANJAPE SCHEMES (CONSTRUCTION) LIMITED
PSC House, Off Prabhat Road, Dr. Ketkar Road, Erandvane, PUNE 411004 MH
Email: apoorvr@pscl.in Contact No.+91 97666 27013

BEFORE THE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH, NEW DELHI****Original Application No. 38/2020 (WZ)****IA No. 48/2020**

Tanaji B. Gambhire **Applicant(s)**
Versus
Union of India & Ors. **Respondent(s)**

**Submitted by M/s. Paranjape Schemes (Construction)
Ltd. Arranged as Respondent No. 12**

Reply to (Paragraph nos. 'a' to 'mm')

SUBMITTED TO**FOUR-MEMBER JOINT COMMITTEE**

**[CPCB, SEIAA, Maharashtra, District Magistrate, Pune
and Maharashtra State PCB as the Nodal Agency]**

As per Daily Order 06.07.2021

Sir, we are pleased to submit the details as required by the Committee. We are submitting it through the nodal agency. We also request the Committee to take this reply on record and also note our respectful humble submissions at the outset.

We were not formally made Respondent in this Original Application or the Interlocutory Application. The information

Received on Dt. 03/01/2021

1

[Signature]
R. C. B. C. B. Pune

T.C.

[Signature]

Apoorv Ranade

From: Apoorv Ranade <apoorvr@pscl.in>
Sent: 30 December 2021 21:53
To: 'SRO Pune 1'
Cc: yashp@pscl.in
Subject: SUBMISSION OF DETAILS AS REQUIRED BY THE JOINT COMMITTEE IN THE NGT MATTER VIZ. OA No.38/2020 (WZ)
Attachments: OA 38-2020_REPLY TO JOINT COMMITTEE_R10-29-12-2021_.pdf

TO,
MAHARASHTRA POLLUTION CONTROL BOARD
NODAL AGENCY FOR FOUR-MEMBER JOINT COMMITTEE
[CPCB, SEIAA, Maharashtra, District Magistrate, Pune]

SUBJECT: SUBMISSION OF DETAILS AS REQUIRED BY THE JOINT COMMITTEE IN THE NGT MATTER VIZ. OA No.38/2020 (WZ)

Respected Sir,

With reference to the above subject, we are pleased to submit the details as required by the Committee. We are submitting it through the nodal agency. We also request the Committee to take this reply on record and also note our respectful humble submissions at the outset.

A copy of the Reply alongwith annexures referred therein is attached alongwith this email.

We hereby request an acknowledgement of this email.

Thanking you

Sincerely,

Apoorv Ranade
For Paranjape Schemes (Construction) Limited

Apoorv Ranade

From: postmaster@adminmpcb.onmicrosoft.com
Sent: 30 December 2021 21:53
To: apoorvr@pscl.in
Subject: Delivered: SUBMISSION OF DETAILS AS REQUIRED BY THE JOINT COMMITTEE IN THE NGT MATTER VIZ. OA No.38/2020 (WZ)
Attachments: details.txt; Untitled attachment 00031.txt

Your message has been delivered to the following recipients:

['SRO Pune 1' \(sropune1@mpcb.gov.in\)](mailto:sropune1@mpcb.gov.in)

Subject: SUBMISSION OF DETAILS AS REQUIRED BY THE JOINT COMMITTEE IN THE NGT MATTER VIZ. OA No.38/2020 (WZ)

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Original Application No. 38/2020 (WZ)

IA No. 48/2020

Tanaji B. Gambhire **Applicant(s)**

Versus

Union of India & Ors. **Respondent(s)**

**Submitted by M/s. Paranjape Schemes (Construction)
Ltd. Arranged as Respondent No. 12**

Reply to (Paragraph nos. 'a' to 'mm')

SUBMITTED TO

FOUR-MEMBER JOINT COMMITTEE

**[CPCB, SEIAA, Maharashtra, District Magistrate, Pune
and Maharashtra State PCB as the Nodal Agency]**

As per Daily Order 06.07.2021

Sir, we are pleased to submit the details as required by the Committee. We are submitting it through the nodal agency. We also request the Committee to take this reply on record and also note our respectful humble submissions at the outset.

We were not formally made Respondent in this Original Application or the Interlocutory Application. The information

T.C.

is being given on the basis of the limited query received, without knowing the entire submissions in this matter on the record of the Hon'ble National Green Tribunal.

From the number of the OA, it appears that it has been filed somewhere in the year 2020. Our first 'Environmental Clearance', 'Consent to Establish', 'Consent to Operate' and the actual construction were all started in the year 2007 and finally ended in the year 2009. The Diary of Events in this regard are given in the table below.

Sr.	Date	Activity / Particulars
1	15-12-2005	Purchase of Land (Development Agreement)
2	12-07-2006	Building Plan Sanction granted by PMC
3	25-06-2007	Environment Clearance granted by MOEF
4	25-07-2008	Application for Consent to Establish to MPCB
5	02-12-2009	Consent to Establish granted by MPCB
6	11-12-2009	Handing over the possession to the bonafide buyers via Deed of Declaration
7	17-12-2009	Final Completion Certificate granted by PMC
8	02-01-2010	Application for Consent to Operate (Residential Project)
9	02-08-2010	Consent to Operate (Residential Project)

As can be seen from above, our construction was complete in all respect on 17-12-2009 and the possession was handed over to the **bonafide** occupants by Deed of Declaration on 11-12-2009, which have not been made parties in this OA and IA. [The earlier two Completion certificates were granted on 09-09-2009 and 15-11-2009 for buildings A, B, C, D).

Further, as per the s.14 and 15, the Hon'ble Tribunal can entertain the '**substantial question related to environment**' as defined in 2(m) of the '**National Green Tribunal Act 2010**' and the jurisdiction of the Hon'ble Tribunal is restricted by limitation period by s.14 and 15 up to a maximum of 6 months and 5 years, respectively, from the date of cause of action for such dispute first arose.

PP also was not made the Respondent Party at the time of admission and when the detailed order was passed on 06-07-2021. Hence these facts could not be placed on record OR brought to the notice of the Hon'ble Tribunal, for curtailing the ambit, scope of the application only for the time period subsequent to what has been barred by limitation.

Be that so as it may be, and **without prejudice to our rights and contentions**, we are still giving the complete details and factual information, so as to enable Committee to verify the old facts as well and ensure that we as PP have not done any wrong.

THE ONLY ERROR OR OMISSION OR ABERRATION IS
AS FOLLOWS:

We obtained the first 'Environmental Clearance' on 25.06.2007. We had submitted complete information at that point of the time to the appraisal committee, including Form, details, drawings, conceptual plans, elevations, sectional elevations etc. complete. ***It will be pertinent to note that at that point in time, FSI and NON-FSI area was not stated separately in the EC.*** As such even though the plans approved by the Corporation have such break-up, EC never used to reproduce these details in their EC letter.

Subsequently, all permissions from Corporation, under MRTP/DC Rules and Consent from the MPCB was obtained accordingly on that basis, exactly for whatever area was planned, proposed, appraised and granted in the EC. The construction also was exactly as per those details and drawings. The Corporation also gave us Completion Certificate and Occupancy Certificate on that basis on 17-12-2009

HOWEVER, while applying for the expansion on 30-07-2018, we forgot to ***separately mention*** the NON-FSI area of 13,904 sq.m towards the parking, services & balconies of the residential buildings, which was already completed as per the earlier sanctioned plans, EC and Consent in the year before the year 2009. Whereas, the FSI area of the

residential buildings, was mentioned higher than the actual FSI by 1591 sq.m. (It was mentioned as 22593 sq.m.(as per previous EC) in our application whereas the actual FSI area of the residential buildings is 21002 sq.m as per Sanctioned Plan).

Thus the net difference, due to these errors, is as follows –

13904 sq.m.	(Non FSI of Residential buildings not included in the BUA of our application)
- 1591 sq.m.	(Excess FSI of residential buildings mentioned in our application)
<hr/>	
= 12313 sq.m.	Net Difference of BUA which was not separately mentioned in our application & subsequent EC

The parking & balcony area is for the purpose specified and is not for the sale component. It is provided as per the mandatory DC Rules under MRTP Act. This NON-FSI area was not mentioned in the earlier ECs separately. The area corresponding to parking, services and balconies was not counted in FSI and hence it was not reproduced in EC letter also.

This area was already appraised in the first EC dated 25.06.2007. This area was also mentioned in the PMC Sanctioned plan No.CC/319/19 dated 17.05.2019, which was submitted to SEIAA during the meeting dated 29.08.2019. After considering all this information only and based on these submissions the SEIAA granted the second EC dated 20-09-2019. Hence, it is clear that we as

proponents have not suppressed any information from the authorities about the past EC dated 25.06.2007.

Further, **we have pointed out this error now simultaneously of our omission to SEIAA-Maharashtra,** for correction of EC with the inclusion of the NON-FSI Area (Parking & Services) which was not stated separately in our application for EC expansion dated 30-07-2018, which was later granted on 20-09-2019. [■ Annexure L – Application for Correction of EC submitted to SEIAA]. There is not going to be any Expansion or Modernization due to this, as this was already covered, considered and granted in the first EC of 2007 itself.

We also hereby clarify that it did not change our category from 20,000 to 1,50,000 sq.m to >1,50,000 sq.m (i.e., the projects requiring EIA Study). As such, we did not escape any rigour of EIA Notification or did not get any benefit out of that, due to this error of not separately mentioning the NON-FSI area.

**REPLY TO THE ISSUES RAISED BY THE
APPLICANT AS IN PARAGRAPH NO. 'a' to 'mm'**

Allegation 'a': - The total completed BUA of the project till today is more than 44053.49 sq.m comprising 4 residential buildings, 238 flats against the permissible BUA of 22592.86 sq.m in is Environment Clearance dated 25.06.2007. This is a substantial increase in the scope of the project. This is a violation of the terms and conditions of the EC dated 25.06.2007.

Reply to allegation 'a':- PP has obtained EC dated 25.06.2007 (for 4 residential buildings) (■ Annexure A) for 22592.86 sq.m. At the time of grant of said EC, there was a prevailing practice of mentioning the 'FSI' Area in the EC letter. Hence, the area mentioned on the EC i.e. 22592.86 sq.m. is the FSI area only. PP has completed the construction of the said scope of the project within the validity period of the said EC and also obtained Completion Certificate vide reference no. BD/OC/98 dated 17.12.2009 as well as Consent to Operate from MPCB vide BO/RO-Pune/RO(P&P)/EIC-PN-5243-10/O/CC-285 dated 02.08.2010 i.e., within the validity of the said EC dated 25.06.2007. There was no change in the scope of the project beyond the limits prescribed in the said EC i.e., 4 Residential Buildings with 22592.86 sq.m 'FSI' Area.

The clarification regarding FSI area & built-up area was given by the MOEF vide the Notification 04.04.2011 (■ Annexure K), which clarifies at clause (III)-(iii) - ***“the total covered built-up area for the purpose of this Notification is defined as ‘the built-up or covered area on all the floors put together including the basement(s) and other service areas, which are proposed in the building/ construction projects’”***. Nevertheless, PP had completed the construction and also obtained the necessary completion certificate & consent to operate before the said notification was issued.

Allegation ‘b’: - PP procured the ex-post-facto Environment Clearance dated 20.09.2019 for a total BUA of 36756 sq.m for expansion of one additional commercial building and suppressed the actual total completed BUA of the project till today is more than 44053.49 sq.m comprising 4 residential buildings, 238 flats. This is a substantial increase in the scope of the project. This is a violation of the terms and conditions of the EC dated 20.09.2019.

Reply to Allegation ‘b’:- PP has obtained the Environment Clearance dated 25.06.2007 & Consent to Establish dated 02.12.2009 (■ Annexure C). Both approvals have been granted for a total BUA 22592.86. As per prevailing norms of the said time, the said EC was granted on the FSI area. PP completed the

construction as per the said EC & Consent to Establish, well within their respective validity periods. PP has also applied & obtained Consent to Operate dated 02.08.2010 (■ Annexure D) for 22592.86 sq.m. i.e., the entire potential as per first EC & Consent. Thus, the BUA was not exceeded beyond the approved limit, nor the construction was undertaken beyond the validity of the EC & Consent.

Further, due to additional development potential on account of the vacant plot area of 1578 sq.m., PP proposed an additional commercial building in the said plot area. PP applied to the local planning authority (Pune Municipal Corporation) for sanctioned layout/commencement certificate for the proposed additional building and obtained the same vide CC/0319/19 dated 17.05.2019 (■ Annexure E).

PP also applied for Environment Clearance & Consent to Establish for the proposed additional commercial building to SEIAA and MPCB respectively. PP obtained the said EC (■ Annexure B) & Consent to Establish (■ Annexure F) on 20.09.2019 and 17.12.2019 respectively. While obtaining the said EC & Consent to establish for the proposed commercial building, the MOEF notification dated 04.04.2011 was applicable and hence the proposed BUA of a commercial building was expressed as FSI + NON-FSI separately in the EC application (**refer to table no.2 below**).

	EC 2007	EC 2019	On-site Actual Constructed
FSI	22592	25064	23803
NON-FSI	24130	11692	25266
Total	46722	36756	49069

- It was very much submitted as per Form, plans, details but not mentioned separately in the EC letter as per prevailing practice.
- As we did not show the NON-FSI area towards Parking & Services separately while applying for the EC, which was already constructed in 2009, it did not reflect in the final EC letter also separately.

Also, since the proposed commercial building was part of the same larger plot, the BUA of the previously completed 4 residential buildings had to be included in the total BUA mentioned in the EC application (Consolidated Statement). While mentioning the BUA of the older residential buildings in terms of FSI & NON-FSI, there was a mistake made by PP, i.e., an area of 13904 sq.m. of NON-FSI area (parking, services & balconies) was not included, an excess area of 1591 sq.m. of FSI was included in the overall BUA mentioned in the Consolidated Statement. Thus, resulting in a net difference of 12313 sq.m in the overall BUA in our application.

Due to this, the total BUA reflecting on the EC dated 20.09.2019 is less than the actual BUA by 12313 sq.m. However, the said residential buildings along with their parking floors were appraised EC dated 25.06.2007 and completed in the year 2009 and are mentioned as 'Completed Construction as per previous EC' in the subsequent 2nd EC Letter dated 20.09.2019.

Allegation 'c':- Total BUA of the Project is more than 48776.01 sq.m (Existing-44053.49m² + Proposed-4722.52 m²) and this amounts to a violation of terms and conditions of Environment Clearance dated 25.06.2007 & 20.09.2019, Consent to Establish dated 02.12.2009 & 17.12.2019 and Consent to operate dated 02.08.2010 & 09.11.2015.

Reply to Allegation 'c':- PP has not exceeded the built-up area as approved in the respective EC/ Consent to establish. The EC dated 25.06.2007 is for the 4 residential buildings which are based on the FSI area. PP has not exceeded the FSI area while constructing the 4 residential buildings. Whereas, the EC dated 20.09.2019 is for 1 commercial building which is based on FSI + NON-FSI Area. PP has not exceeded the FSI and/or NON-FSI area while constructing the 1 commercial building.

Allegation 'd':- PP has carried out illegal construction of more than 21460.63 sq.m in violation of terms and

conditions of Environment Clearance, Consent to Establish and Consent to Operate.

Reply to Allegation 'd':- Refer reply to point no. c above

Allegation 'e':- PP has carried out the construction of 44053.49 M2 and have undertaken expansion of 4722.52 M2 having total BUA of the Project 48776.01 M2 therefore PP have carried out the construction beyond permissible limits of EC and Consents.

Reply to Allegation 'e':- Refer reply to point no. c above

Allegation 'f':- SEAC-III & SEIAA have not explained the revalidation of EC dated 25.06.2007 after the expiry of the validity of EC on 24.06.2012.

Reply to Allegation 'f' :- The first EC obtained on 25.06.2007 was granted with a validity of 5 years i.e., up to 24.06.2012. PP has obtained Consent to Operate dated 02.08.2010 for the entire BUA (FSI) as per the first EC. Further, PP has also obtained many other approvals pertaining to the completion of the project. Such as, final completion certificates from PMC vide ref no. BPDP/Zone1/72 dated 09.09.2009 and BPDP/Zone1/110 dated 05.10.2009 and BPDP/Aundh/OC/98 dated 17.12.2009 (■ Annexure

H); Final Fire NOC from CFO vide Ref no. OW/FB/1063 dated 18.07.2009 (■ Annexure G). Therefore, there was no requirement of revalidation of EC since PP had already completed the construction work as per the said EC dated 25.06.2007, well within its validity period.

Allegation 'g':- PP has obtained ex-post-facto EC dated 20.09.2019 by suppressing actual construction total BUA.

Reply to Allegation 'g':- The EC dated 20.09.2019 was applied and obtained for the proposed commercial building only. The construction of the said building was commenced only after obtaining the EC and Consent to establish. Therefore, the said EC is not ex-post facto.

Allegation 'h':- PP has obtained ex-post-facto Consent to Establish dated 17.12.2019 by suppressing actual construction total BUA.

Reply to Allegation 'h':- The Consent to Establish dated 17.12.2019 was obtained for the proposed commercial building only. The construction of the said building was commenced only after obtaining the EC and consent to establish. Therefore, the said consent to establish is NOT ex-post facto. MPCB has conducted a Site visit before granting the said consent to

establish and official of MPCB has noted in the site visit report that the said application *“is for construction of ‘commercial’ building”, and “PP has not started any construction work at the site.”*

Allegation ‘i’:- PP has operated the project without Consent to Operate from 01.01.2012 to 08.11.2015 and 01.01.2017 to date.

Reply to Allegation ‘i’:- PP was not operating the project during the said period. PP had handed over the completed portion of the project (4 Residential buildings A, B, C, D) to “Magnolia Apartments” by executing Deed of Declaration vide Registered Doc no. Haveli-4/9009/2009 dated 11.12.2009 (■ Annexure I)

Allegation ‘j’:- PP did not install OWC within three months from Consent to operate dated 08.11.2015, as per condition No. 9 imposed by MPCB in CTO dated 08.11.2015.

Reply to Allegation ‘j’:- As per condition no. (iv) of the First Consent to operate dated 02.08.2010 & Condition no. II(viii) of the First Environment Clearance dated 25.06.2007, the respective authorities directed PP to make provision for ‘composting’ of wet garbage. Accordingly, PP has provided vermicomposting pits in compliance with the said conditions. PP has also handed over the completed environmental

infrastructure (STP & Vermicomposting pits) to the occupants i.e., to "Magnolia Apartments" by executing Deed of Declaration vide Registered Doc no. Haveli-4/9009/2009 dated 11.12.2009.

Allegation 'k':- PP is extracting a huge quantity of groundwater from two bore wells without any permission from the competent authority for the construction of the project as well as domestic use of the occupied part.

Reply to Allegation 'k':- PP has never drawn any groundwater in the said project, neither during construction nor after completion of construction, and therefore, the PP did not require specific permission from any authority. PP had already obtained Water Supply from Pune Municipal Corporation vide water connection permission no. 1300 dated 27.08.2007. Further, PP completed the water line connection to the said project as confirmed in letter no. 1733 dated 15.10.2007 (■ Annexure J) from Water Supply Dept (PMC).

Allegation 'l':- Half-yearly Compliance report dated 10.01.2019 having Photograph of "Solid Waste Management" system at internal Page-33 showing composting pits are bogus photographs and having no concern with this project site

Allegation 'm':- Half-yearly Compliance report dated 10.01.2019 having Photograph of "Rain Water Harvesting" system at internal Page-33 showing rainwater outlets from the terrace is clearly showing that there is no rainwater harvesting at the project site and this photograph is misleading.

Allegation 'n':- Half-yearly Compliance report dated 10.01.2019 having the Photograph of "Plantation" system at internal Page-34 showing plantation is totally bogus photographs and having no concern with this project site

Allegation 'o':- Reports on Ambient Air Quality Monitoring, Noise Level, Water Sample Analysis (Drinking & Borewell), Stack Emission and Effluent Analysis etc. from June-2018 to September-2018 are false and bogus and prepared without collecting samples.

Allegation 'p':- Half-yearly compliance report dated 10.01.2019 is nothing but the compromised statement to overcome the illegality & violations committed by PP. Therefore, PP has played fraud and cheated on Authority.

Allegation 'q':- PP has not made any test for groundwater contamination and quality of water and there is serious groundwater contamination.

Allegation 'r':- PP has not provided any solid waste management system like OWC / Compost pits and waste generated is dumped to PMC waste yard creating a burden on public systems and solid waste is generating various greenhouse gases and there is no scientific disposal of the solid waste generated from the project.

Allegation 's':- PP has done concretization of marginal spaces, open spaces

Allegation 't':- PP has used traditional clay bricks and PP has not used any scientific construction method.

Allegation 'u':- PP has not installed a solar system for energy conservation system.

Allegation 'v':- PP has not provided any rainwater harvesting system for groundwater recharge.

Allegation 'w':- PP has not developed 10% recreational open space as per norms and PP has not made tree plantation of 189 trees as per the norms. PP has made illegal tree cutting.

Allegation 'x':- PP has not preserved the top layer of fertile soil and there is no X. soil test for contamination.

Allegation 'y':- PP has provided a swimming tank giving additional burden on the groundwater consumption

Allegation 'z':- A huge quantity of sewage water is generated and there is no scientific treatment of sewage water in STP. It is just a scrap skeleton.

Allegation 'aa':- PP is creating a huge burden on the environment due to day-to-day waste generation by consumption of natural resources and it is causing a huge burden on the public facilities and services on account of environmental damage.

Allegation 'bb':- PP has committed illegal activities and given rise to the violation of environmental protection enactments and further caused degradation of environment & ecology intentionally.

Allegation 'cc':- PP has not complied with the conditions of the commencement certificate related to the installation of environmental infrastructure to avoid the degradation

Allegation 'dd':- PP has not provided a fire and safety system at the site and there is no approach road for a fire engine.

Allegation 'ee':- PP has not provided the ramp slope in the ratio of 1:10

Allegation 'ff':- PP has not provided site margin as per the DC Rules

Reply to allegations '1' to 'ff' above:- It is hereby stated that the contents of paragraphs above are totally false, frivolous, misconceived, without any knowledge of the facts at the site, fishing in the dark, vague, without any supporting material to the contrary, incorrect, and therefore, PP denies the contents thereof. PP has undertaken the construction work as per the provisional NOCs/approvals (Sanction Plan, Provisional Fire NOC, EC, Consent to Establish etc.), obtained from the respective authorities. Further, upon completing the construction work as per the provisional NOC/approvals within their respective validity period, PP has also obtained Final NOCs (Completion Certificate, Final Fire NOC, MPCB Consent to Operate etc.) from the respective authorities. The existing STP, Vermicompost Pits, Rainwater Harvesting Pits, Trees planted and preserved till date, Recreational open spaces, adequate marginal spaces, Solar PV system etc., Fire Safety system, adequate ramp slope etc. has been seen and verified by the officials of MPCB, PMC during their site visit.

PP also states and submits that these allegations are nothing but the reproduction of conditions of the 'Environmental Clearance' and 'Consent to Operate' by

stating that each and everything is not done or complied with and all reports are bogus. **IT SHOULD BE NOTED THAT THESE ALLEGATIONS ARE MADE ON AFFIDAVIT.** Such allegations can be made against anyone to harass, as is done in our case, without any data, basis and facts. **WE URGE THE COMMITTEE TO VERIFY THE FACTS AND RECORD IF FOUND TO BE A FALSE STATEMENT ON THE AFFIDAVIT.** This particular Applicant is in the habit of also making the wild allegations against the Committee Members assassinating their character and inter alia blaming the Hon'ble Members appointed by the Hon'ble Tribunal.

Allegation 'gg':- PP has not provided mandatory 15% amenity space under DC Rules of PMC. As per PMC's DC Rules is the required amenity space is 5%, not 15%. Secondly, the said property was previously in a brick kiln zone, therefore, PMC had exempted the amenity space requirement and asked PP to pay a premium based on the plot area, which PP had already paid. Hence, Amenity space provision was not applicable for the project.

Allegation 'hh':- PP in connivance with PMC officer has violated the provisions of Environment enactment and therefore PMC officers are also equally responsible.

Allegation 'ii':- PP has violated the principle of sustainable development.

Allegation 'jj':- Involvement of bureaucratic nexus in the illegal act to help PP and Misuse of position by Government officers and thus provisions of EIA Notification-2006 r/w Environment Acts 1986, Water (P & CP) Act-1974 and Air (P & CP) Act-1981 are not complied by PP.

Allegation 'kk':- PP has caused substantial damage to the environment and ecology for more than Rs. 200 Crores, which shall be recovered from PP.

Allegation 'll':- PP is unapologetic and adopted a careless and reckless attitude towards environmental protection.

Allegation 'mm':- Thus, it is mandatory to demolish the project construction and stop further construction permanently.”

Reply to allegations 'hh' to 'mm' above:-

Allegations from hh to mm above are not part of this submission due to its irrelevance with us (Paranjape Scheme Pvt. Ltd.)

29 December 2021



**S P PARANJAPE, DIRECTOR
For Paranjape Schemes (Construction) Limited**

T.C.

F. No. 22-21/2020-IA.III [E 138949]

Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110 003

Dated 28th January, 2022

OFFICE MEMORANDUM

Sub.: Observation of Hon'ble Supreme Court with reference to the SoP dated 7th July 2021 for identification and handling of violation cases under EIA Notification 2006 – reg.

The Ministry issued a Standard Operating Procedure dated 7th July 2021 bearing the file number 22-21/2020-IA.III, for identification and handling of violation cases under EIA Notification 2006 in compliance to order of the Hon'ble National Green Tribunal in Appeal No. 34/2020 (WZ) titled Tanaji B. Gambhire Vs Chief Secretary, Government of Maharashtra. The copy of the SoP is enclosed for ready reference.

2. The SoP was challenged in the Madurai Bench of the High Court of Madras in the matter W.P.(MD) No. 11757 of 2021 titled Fatima Vs Union of India and was interim stayed vide order dated 15th July 2021.

3. Recently, in the Order dated 09th December 2021 in the matter of Civil Appeal Nos. 7576-7577 of 2021 in Electrosteel Steels Limited Vs Union of India and Ors., the Hon'ble Supreme Court of India has *inter-alia* observed the following:

"93. The interim order passed by the Madras High Court appears to be misconceived. However, this Court is not hearing an appeal from that interim order. The interim stay passed by the Madras High Court can have no application to operation of the Standard Operating Procedure to projects in territories beyond the territorial jurisdiction of Madras High Court. Moreover, final decision may have been taken in accordance with the Orders/Rules prevailing prior to 7th July, 2021."

4. The copy of the order which is self-explanatory is enclosed herewith for necessary action.

5. This is issued with the approval of the competent authority.



(A K Agrawal)
Director

Encl: As above.

To

1. Chairperson/ Member Secretaries of all Expert Appraisal Committees
2. Chairperson/Member Secretaries of all SEIAAs/SEACs
3. All Officers of IA Division

Copy for information to

1. PS to Hon'ble MEF&CC
2. PS to Hon'ble MoS, EF&CC
3. PPS to Secretary, EF&CC
4. PPS to AS (TK)/JS (SKB)
5. Website, MoEF&CC /Guard file

Note: The Office Memorandum dated 07/07/2021 issued by MoEFCC has been attached in Ax. O Page No.576

Item No. 02

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 31/2020 (WZ)
(I.A. No. 136/2020)

Shashikant Kamble

Applicant

Versus

M/s Embassy Property Development Pvt. Ltd.

Respondent

Date of hearing: 10.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Brajesh Singh, Advocate

Respondent(s): Mr. S.K. Jain, Advocate for R.1
Mr. Aniruddha Kulkarni, Advocate for R3 & R4
Ms. Mansi Joshi, Advocate for R.6
Ms. Shyamli Gadre, Advocate for R.8 – MIDC
Mr. D.M. Gupte Advocate for R-9 (MoEF&CC)

ORDER

1. Grievance in this application is against construction of housing project by respondent No. 1 - M/s Embassy Property Development Pvt. Ltd., Pune, in violations of environmental norms.

2. According to the applicant, the building approval to the project was granted in the year 2005 which was revised in the year 2007. Environmental Clearance (EC) requirement became operative on 14.09.2006 but the project was completed without EC. Later, ex post facto EC was obtained from SEIAA, Maharashtra on 29.03.2011.

T.C.

3. Vide order dated 14.08.2020, the Tribunal issued notice to the Project Proponent (PP) and the statutory regulators including SEIAA, Maharashtra and State PCB. The Tribunal also constituted a joint Committee of District Collector, Pune, SEIAA, Maharashtra and State PCB to furnish a factual and action taken report in the matter.

4. Accordingly, report dated 06.12.2021 has been filed by the joint Committee to the effect that a criminal case has been filed before the CGM, Pune for construction of the project without requisite EC. However, the PP has filed a Writ Petition in the Bombay High Court against the initiation of criminal proceedings.

5. The PP has filed a reply inter alia raising the plea of limitation. It is submitted that no part of cause of action has arisen within five years prior to filing of the OA. No continued violation pointed out. Thus, the Tribunal cannot entertain the application beyond statutory limitation.

6. We have heard learned counsel for the parties.

7. We find that the petition was filed on 04.02.2020 and no cause of action in five years preceding the filing of OA has been pleaded.

In view of the above, we uphold the objection of limitation and dismiss the application.

I.A. No. 136/2020 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

February 10, 2022
Original Application No. 31/2020 (WZ)
(I.A. No. 136/2020)
A

T.C.

ANNEXURE – R4

REVISED LAYOUT OF THE COMMERCIAL BUILDING AT S. NO. 136/2, PASHAN, PUNE SANCTIONED ON 17/05/2019

EXISTING PARKING AREA STATEMENT A, B, C, D WING

PARKING AREA STATEMENT	TOTAL	PARKING REQUIRED			PARKING PROVIDED		
		CAR	SCOOTERS	CYCLE	CAR	SCOOTERS	CYCLE
1 TENEMENTS 80 TO 150 SQ.M.	168	01	02	02	168	336	336
NEW RULE 1 TENEMENTS 80 TO 150 SQ.M.	24	02	03	04	48	72	96
NEW RULE 2 TENEMENTS 40 TO 80 SQ.M.	46	01	04	04	23	92	92
TOTAL	238				239	500	524
AREA REQD./UNIT		12.50	3.0	0.700	2987.50	1500	366.80
TOTAL AREA REQUIRED	4854.30 SQ.M.				2887.50	1449	352.80
AREA AVAILABLE FOR PARKING	12110.314 SQ.M.						

RETYPE

EXISTING PARKING AREA STATEMENT A, B, C, D WING

Parking area statement	Total	Parking Required			Parking Provided		
		Car	Scooters	Cycle	Car	Scooters	Cycle
1. Tenements 80 to 150 Sq. m	168	01	02	02	168	336	336
New Rule 1 Tenements 80 to 150 Sq. m	24	02	03	04	48	72	96
New Rule 2 Tenements 40 to 80 Sq. m	46	01	04	04	23	92	92
Total	238				239	500	524
Area Requirement		12.5	3.0	0.7	2987.5	1500.0	366.8
Total Area Required		4854.3 Sq. m (m²)			2887.5	1449.0	352.8
Area Available for Parking		12,110.314 Sq. m					

IMPORTANT NOTE: All figures of area are truncated to significant integer digits (for ease of reading). As such, when sum is shown as the bottom, there can be discrepancy of last significant digit.

Revised layout of the commercial building at S. No. 136/2, Pashan, Pune Sanctioned dated 17/05/2019 attached in Memo as Ax. 4, Page No.163

T.C.



Proof of Service

raghunath mahabal <adv.rbmahabal@gmail.com>

NGT: OA 38/2020 "Tanaji B. Gambhire Vs Union of India": R12: Circulation of the Advance copy of Affidavit

1 message

raghunath mahabal <adv.rbmahabal@gmail.com>

8 January 2023 at 22:59

To: tanaji_9june@yahoo.com, secy-moef@nic.in, chiefsecretary@maharashtra.gov.in, "Principal Secretary Environment Dept. Govt. of Maharashtra" <psec.env@maharashtra.gov.in>, ms@mpcb.gov.in, ropune@mpcb.gov.in, Thane Mahabal <thane@mahabal.com>, pmcmco@gmail.com, prashant.waghmare@punecorporation.org, rdc.pune-mh@gov.in, cs@pscl.in, nitinlonkar@gmail.com, adv.manasi.joshi@outlook.com, Rahul Garg <rahul.garg@mgklegal.com>, aniruddha1488@gmail.com

Cc: Raghunath Mahabal <mahabal60@gmail.com>, ssgore2005@gmail.com, apoorvr@pscl.in, Yash Paranjape <yashp@pscl.in>

Dear Sirs,

We are Respondent No. 12 in Original Application No. 38 of 2020 (WZ) "Tanaji B. Gambhire Vs Union of India" submitting /circulating the advance copy of Affidavit by Respondent No. 12 i.e., Paranjape Schemes (Construction) Ltd. We are also filling the same affidavit through the NGT e-filing system. The submitted affidavit may go through a scrutiny process. Therefore if required we may again recirculate the final copy of the same reply affidavit. If there is any change in NGT registry scrutiny.

Adv. Sachin Subhash Gore, 7350212877

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Adv. Sachin Gore 7350212877 | Adv. Sumedha Marathe | Adv. Ashlesha Gondhalekar | Adv. Antima Bazaz New Delhi

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